



**ALLIANCE
FOR UNIFORM
HAZMAT
TRANSPORTATION
PROCEDURES**

National Governors' Association
National Conference of State Legislatures

mc-92-4

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| ACTION | |
| is assigned to | |
| RSPA | |
| CONTROL NO. | |
| 931118-008 | |
| SIMS | S-10 |

November 17, 1993

cc S-1
S-2
S/PAG

The Honorable Federico Peña
Secretary
U.S. Department of Transportation
400 7th Street, SW
Washington, D.C. 20590

FM, SA-95-2180-51

Dear Secretary Peña:

On behalf of the Alliance for Uniform HazMat Transportation Procedures (the Alliance), we are pleased to transmit this report containing our findings and recommendations for uniform forms and procedures for the state registration and permitting of motor carriers engaged in the transport of hazardous materials.

The Alliance, established in accordance with Section 22 of the Hazardous Materials Transportation Uniform Safety Act (HMTUSA), consists of state and local officials who have worked throughout the past two years to create what we believe is a effective and efficient approach to state registration and permitting of hazardous materials transporters. The Alliance brought together representatives from states, localities, and the regulated industry to ensure broad-based participation in the deliberations.

To test the feasibility of the Alliance's recommendations, four states will conduct pilot programs over the next two years. At the end of the demonstration, the Alliance will provide additional findings and recommendations to the Department that we hope will help you during the rule-making process to implement Section 22.

In transmitting this report, the Alliance must raise an issue of extreme concern to the members. Throughout the Alliance's deliberations, the members operated under the assumption that HMTUSA authorized a dual system for registering and permitting motor carriers, the federal programs contained in Section 8 and a uniform state program authorized in Section 22. At the Alliance's first meeting in January 1992, questions emerged about the scope of the Alliance's authority since the title for Section 22 referred to both "registration and permitting" while the language in Section 22 was limited to "registration." At the suggestion of the Alliance's legal counsel, we approached the House Subcommittee on Surface Transportation for a technical amendment to include the word "permitting"

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See Supp Info file for Attachment to Docket's Report...

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where appropriate. The amendments were passed as part of the Pipeline Safety Act of 1992.

During the Department of Transportation's review of a draft of this report, legal counsel for the Federal Highway Administration stated that the use of the term fitness in the Alliance's report may be inappropriate since the federal safety permit program in Section 8 would preempt state permitting of carriers of hazardous materials covered under the federal program. We object to this eleventh-hour determination for a number of reasons.

- The Alliance, based on the advice of its legal counsel, indicated its understanding from the outset of this process that HMTUSA authorized a dual system of state and federal permitting. As mentioned above, the Alliance sought clarification from Congress on this issue. At no time in the past two years did anyone at FHWA indicate any disagreement over this assumption.
- This determination is based on the statutory language in Section 8. The Act reads, "Except as provided in this subsection, a motor carrier may transport or cause to be transported by motor vehicle in commerce a hazardous material only if the motor carrier holds a safety permit issued by the Secretary." We do not share FHWA's interpretation that if a motor carrier has a federal safety permit, it needs no other credentials. The term "only if" is restrictive, not inclusive. It means that a carrier **MUST** have a federal permit. It does not mean that a federal permit relieves the carrier of any other requirements authorized by federal or state law. Since Section 22 authorizes a state permit, as long as it is uniform, we are puzzled by FHWA's interpretation of the law.
- FHWA legal counsel suggests that the proposed regulation governing the federal safety permit indicated that state programs covering the same materials would be preempted. Nowhere in the regulation is it clearly stated that the federal permit was the **ONLY** permit that would be required for transporters of these materials. There was vague language in the preamble about possible preemption. If the drafters of the proposed regulations believed this to be the case, why did they not include more explicit language in the regulation? We, therefore, suggest that the rule-making process was flawed because the Department's interpretation of its own draft regulation goes far beyond what the language suggests. There would have been much more vigorous opposition to the proposed regulation from states and from the Alliance if the drafters had clearly stated their intention.
- In 1992, Congress amended HMTUSA through the Pipeline Safety Act to ensure that Section 22 covered both state registration and permitting of hazardous materials transporters. The amendment

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allows a state "...to permit the transportation of hazardous materials in such State." Hazardous materials are defined in Section 3 of HMTUSA as follows. "The term 'hazardous material' means a substance or material designated by the Secretary under section 104." This is the complete table of hazardous materials. There is no exclusion of materials covered by the federal safety permit in Section 8.

- Based on the logic by FHWA legal counsel that Section 8 preempts state activities under Section 22, is it the position of FHWA that they could preempt all Section 22 state permits simply by extending the Section 8 permit to cover all materials established under Section 104 of HMTA? What, then, is the purpose of Section 22?
- On July 9, 1992, the Research and Special Programs Administration issued its final rule on the federal registration program authorized under Section 8 of HMTUSA. In the preamble to the rule RSPA stated, "This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fee or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials." Has the Department changed its mind since the issuance of the RSPA regulation? Under FHWA's logic, would not state registration programs for materials covered under the Section 8 federal registration program be preempted?
- One of the Alliance's assumptions was that the state and federal programs should complement each other. For that reason, we included questions on the proposed uniform application related to federal registration and the federal safety permit. We view compliance with Section 8 as a prerequisite for a state uniform permit. We are not recommending that the states duplicate the safety review. We fully intend to use FHWA's safety rating as one of the many factors that will determine the qualifications of a motor carrier to transport hazardous materials.
- Section 4 of HMTUSA includes five covered areas over which the Secretary has preemption authority. The Alliance has made no recommendations that are inconsistent with these covered areas. Sections 4 contains no language that restricts the types of hazardous materials that may be covered under the uniform state permit.
- Section 13, which establishes the federal safety permit program, contains no language that restricts the types of hazardous materials that may be covered under the uniform state permit.

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- Section 22 contains no language that restricts the types of hazardous materials that may be covered under the uniform state permit.
- Finally and most important, we are concerned that FHWA legal counsel's determination that the federal safety permit would preempt the state permit for the most dangerous categories of hazardous materials would increase the risk to public health and safety. For example, we understand that FHWA plans to issue conditional permits to carriers who have not yet been reviewed. Does the Department really intend to allow motor carriers to transport explosives based only on a letter of conditional approval because FHWA does not have the capacity to conduct a review in a timely fashion? We also are concerned that FHWA does not recognize the increase in its responsibilities due to the inclusion of intrastate carriers under the Section 8 programs. The fiscal note attached to the proposed regulation indicated that there was no increase in the cost of administration.

The Alliance has operated under an unchallenged assumption for two years. Only when we were ready to formally transmit our recommendations to you and to Congress were we informed of this interpretation of the Act. More important, we are convinced that the interpretation is inconsistent with Congress's intent.

The Alliance has viewed the Department of Transportation as a partner in this effort. We have shared every aspect of our process with FHWA officials. If the interpretation of FHWA's legal counsel is, in fact, the Department's official position, the Alliance will vigorously oppose any regulation that preempts states' authority to permit motor carriers that transport any hazardous materials.

It has been suggested that the pilot program be restricted to FHWA's interpretation of the law. None of the states that volunteered to pilot the Alliance's recommendations would have offered to participate under these conditions. To accept this approach would acknowledge that the Department's position is credible. Nothing could be farther from the truth.

The formation of the Alliance was an attempt to address the issues associated with Section 22 in a collaborative rather than an adversarial climate. The Alliance is open to any suggestions to ensure that the cooperative atmosphere that we endeavored to achieve can be renewed and maintained during the pilot program and implementation of Section 22.

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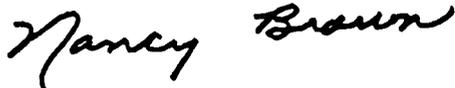
The Honorable Federico Peña
November 17, 1993
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Thank you in advance for your attention to this issue of critical importance.

Sincerely,



Rose McKinney-James
Chair



Nancy Brown
Vice Chair

cc: The Honorable J. James Exon
The Honorable Norman Y. Mineta
The Honorable Nick Joe Rahall

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Report of the

**ALLIANCE
FOR UNIFORM
HAZMAT
TRANSPORTATION
PROCEDURES**

**Submitted to
The Honorable Federico Peña
Secretary of Transportation, U.S. Department of Transportation**

November 17, 1993

The Honorable Federico Peña

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**Report of the
Alliance for Uniform
HazMat Transportation
Procedures**

Transmitted to

The Honorable Federico Peña
Secretary
U.S. Department of Transportation

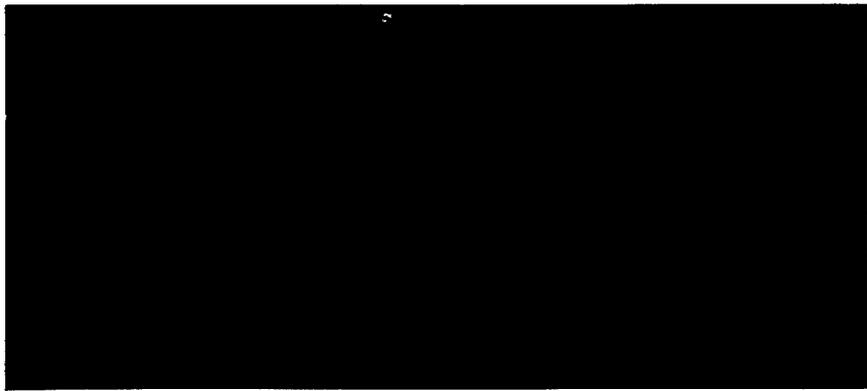
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Alliance for Uniform HazMat
Transportation Procedures

November 17, 1993

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**ALLIANCE
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TRANSPORTATION
PROCEDURES**



SUPPLEMENTAL INFORMATION
FHWA DOCKET MC-92-4-53

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PAGE _____ OF _____

**Report of the
Alliance for Uniform
HazMat Transportation
Procedures**

Transmitted to

The Honorable Federico Peña
Secretary
U.S. Department of Transportation

By the

Alliance for Uniform HazMat
Transportation Procedures

November 17, 1993

ACKNOWLEDGMENTS

This report, the culmination of two years of effort by the Alliance for Uniform **HazMat** Transportation Procedures, was a collaborative effort requiring the attention and labor of many individuals. The Alliance would like to thank Congress for establishing a process under Section 22 of the Hazardous Material Transportation Uniform Safety Act of 1990 that allowed state and local officials to develop their own recommendations for a uniform state registration and permitting program. Special thanks are extended to Jack Fryer, Counsel to the House Surface Transportation Subcommittee, for his willingness to work with Alliance to ensure that our efforts were consistent with congressional intent. Funding for the Alliance and this report was provided by the Office of Motor Carriers, Federal Highway Administration, U.S. Department of Transportation

The Alliance wishes to thank the many state officials and industry representatives who, at their own expense, participated in this effort. A listing of individuals who attended meetings, provided comments on draft documents, and responded to surveys is provided in Appendix C of this report.

The Alliance is grateful to many officials from the U.S. Department of Transportation for their guidance and support throughout this process. In particular, the Alliance appreciates the efforts of Bonnie Bass, who served as the contract officer's technical representative to the Alliance, and Ralph Craft, who **served** as liaison between FHWA and the Alliance.

The Alliance also extends its appreciation to Theresa Chmara, Bruce J. Ennis, and Donald B. Verrilli, Jr. of the Washington law firm of Jenner & Block which provided *pro bono* legal counsel to the Alliance including preparation of the Alliance's recommendation for the federal regulation establishing the Uniform Program.

Jay Kayne, director of economic development and commerce policy studies at the National Governors' Association, and James Reed, program principal at the National Conference of State Legislatures, served as project director and principal investigator, respectively. They were assisted by a number of staff from both associations including Russ Brodie, Patty Catherwood-Reyes, Eric Dobson, Richard Hayes, Thorn Rubel, and Kyle Winston from NGA and George Burmeister, Dwight Conner, Jacqueline Cummins, and Paul Doyle from NCSL. Raquel Stanton, NGA, provided administrative support throughout the project. Jan Dunlavey and Luisa Farrell, NGA, handled meeting arrangements for the Alliance and its subgroups. Gerry Feinstein, NGA, edited the final report and Mary Houghton served as editor of the Alliance's newsletter **TRANSLINES**.

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Section 1 EXECUTIVE SUMMARY

Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandates that states wishing to register and permit motor carriers that transport hazardous materials must do so using uniform procedures and forms. The specific uniformity requirements will be established by the Secretary of Transportation through the federal rulemaking process. Section 22 authorized the Secretary to establish a working group of state and local officials to work with states and industry to develop recommendations for the uniform procedures and forms that would be included in the federal regulations.

The working group, which was called the Alliance for Uniform **HazMat** Transportation Procedures (the Alliance), held its first meeting in January 1992. Over the course of two years, the Alliance established several subgroups and task forces to address each aspect of state registration and permitting of hazardous materials motor carriers. Final recommendations were adopted at the the Alliance's fifth meeting in St. Louis, Missouri, on May **23-25, 1993**.

The following is a brief description of the major provisions for the Alliance's recommended uniform state hazardous materials transportation program.

- Registration of motor carriers that transport hazardous materials will be conducted through a base state system. Each participating jurisdiction will be able to assess a registration fee on motor carriers that transport hazardous materials within their borders. However, the motor carrier will apply to a single base state that will be responsible for collecting the registration for all states and distributing such fees accordingly.
- Participating jurisdictions will issue a reciprocal national permit that will allow a permitted motor carrier to transport hazardous materials in all participating jurisdictions. The motor carrier will apply to its base state for the permit. The base state will conduct a review of the motor carrier's qualifications to transport hazardous materials and, if appropriate, will issue a permit that is valid in all participating jurisdictions that also require the national permit.
- Due to the negative economic value of hazardous waste, a participating state that permits hazardous waste haulers may require additional disclosure information related to the applicant's financial stability and the integrity of the applicant's ownership and management. The disclosure requirements are contained in Part III of the uniform application.
- Although the registration and permit will be issued under a base state system, a participating jurisdiction will retain its individual enforcement authority when a registered or permitted carrier is transporting hazardous materials within its borders. Penalties and the procedures for assessing **penalties** will continue to be those of the jurisdiction in which a violation occurs. Major violations will be reported to the base state. If appropriate, the base state will be required to review the motor carrier's operations to determine whether the violation should result in suspension or revocation of the reciprocal national permit.

- While Section 22 did not explicitly address the issue of local registration and permitting programs, the Alliance has made recommendations by which a locality may become a participating jurisdiction. The provisions ensure that a locality, working with the state, can obtain the revenues required to operate its hazardous materials safety programs (e.g., training and response) and can permit carriers that have not received credentials from another participating jurisdiction.

The base state system will require the establishment of a coordinating mechanism. The Alliance recommends that the participating jurisdictions establish a national repository and a governing board to oversee the compact. The governing board will have the following responsibilities.

- Establish and oversee a program for accrediting the operations of participating jurisdictions to ensure confidence by all jurisdictions in the ability of each member of the agreement to register and permit motor carriers in accordance with the uniform requirements.
- Interpret the agreement and, when appropriate, recommend changes or additions to the agreement to promote its objectives.
- Conduct a dispute resolution process that is accessible to states, industry, and the public to raise concerns about violations of the agreement or the uniform standards.
- Oversee the administration of a national repository that will staff the governing board and provide assistance to the members of the agreement.

To test its recommendations, the Alliance, with financial support from the Federal Highway Administration, will conduct a four-state pilot program. Each pilot state will have one year to pass enabling legislation and establish the internal procedures to conduct the Uniform Program. On July 1, 1993, the pilot states will begin registering and permitting motor carriers in accordance with the Alliance's recommendations. The major objectives of the pilot are as follows.

- Determine the barriers within individual states of adopting the Uniform Program.
- Estimate the cost to states of participation in the program.
- Test the reciprocity provisions for permitting motor carriers.
- Assess the reduction in administrative burden *on* both participating jurisdictions and motor carriers.
- Determine the extent to which the Uniform Program enhances protection of public health and safety.
- Test the local participation provisions.
- Examine the role and operations of a governing board and national repository.

At the conclusion of the pilot program, the **governing** board will present additional findings and recommendations to the Secretary of Transportation to be considered during the federal rulemaking process.

Section 2 INTRODUCTION

The Alliance for Uniform **HazMat** Transportation Procedures is pleased to submit this report to the Secretary of Transportation and to Congress. The contents of this report represent almost two years of fact-finding, deliberations, and negotiations by the Alliance membership in consultation with the motor carrier industry, state program administrators, and the general public.

Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990

In Section 22 of the Hazardous Materials Transportation Uniform Safety Act, passed in November 1990, Congress mandated that following promulgation of regulations by the Secretary of Transportation, "...no State shall establish, maintain, or enforce any requirement which relates to [hazardous materials transportation] unless such requirement is the same as such regulation." To assist the Secretary in developing a uniform program, Congress authorized the Secretary to establish a working group of state and local officials for the purpose of:

- establishing uniform forms and procedures for states that register persons who transport, cause to be transported, or ship hazardous materials by motor carrier, and
- determining whether or not to limit the **filing** of any state registration forms and collection of fees therefore to the state in which a person resides or has its principal place of business.

Additionally, Section 22 mandates that the working group shall consult with persons who would be subject to the recommendations presented to the Secretary.

To organize and staff the working group, now referred to as the Alliance for Uniform HazMat Transportation Procedures (the Alliance), the Federal Highway Administration (**FHWA**) awarded a two-year contract to the National Governors' Association (**NGA**) and the National Conference of State Legislatures (NCSL). Major tasks within the contract included:

- staffing all meetings of the Alliance and any subgroups established by the Alliance;
- analyzing current state and local programs that regulate the transportation of hazardous materials;
- conducting a **feasibility** study of uniform state hazardous material registration and permitting requirements and procedures including a potential base-state approach; and
- developing a model uniform state program for consideration by the Alliance.

The Alliance represents an innovative approach to policy development by Congress and the U.S. Department of Transportation (**USDOT**). By including state and local officials and consulting with industry in the rulemaking process, federal policymakers hope to secure a high level of support from states, localities, and industry for the **final USDOT** regulations.

Creation of the Section 22 Working Group

On October 17, 1991, NGA and NCSL held a meeting with representatives of various public and private associations and FHWA to kick off the project and determine the method by which the Alliance members would be selected. It was recommended that the Alliance consist of approximately thirty members, twenty to be nominated by specific organizations and the remaining ten to be chosen from at-large nominations. The breakdown of membership on the Alliance is as follows:

- National Governors' Association (chair plus four additional members)
- National Conference of State Legislatures (vice-chair plus four additional members)
- National Association of Counties (two members)
- National Association of Towns and Townships (two members)
- National League of Cities (two members)
- US. Conference of Mayors (two members)
- Association of American Motor Vehicle Administrators (two members)
- At-large (ten members)

Members of the Alliance were selected based on their individual expertise and experience in hazardous materials transportation. Special attention was given to ensuring a geographic, programmatic, and political balance among the members. The nominations were submitted to the FHWA Administrator and approved in December 1991.

At its first meeting, the Alliance endorsed the addition of two non-voting members, one representing the regulated industry and the second representing consumer/environmental interests. (A list of Alliance members and their affiliations can be found in Appendix A.)

Summary of Alliance Activities

The following is a brief description of the activities of the Alliance. A listing of participants in Alliance meetings is provided in Appendix B.

First Meeting of the Alliance

More than sixty people attended the first full meeting of the Alliance held in Washington, DC., on January 9-10, 1992. In addition to formal members of the Alliance, other attendees included officials from the U.S. Department of Transportation, industry representatives, and staff from the National Governors' Association and National Conference of State Legislatures.

Members of the Alliance were briefed on the mandates contained in Section 22 and their relationship to other hazardous material transportation requirements contained in the Hazardous Materials Transportation Uniform Safety Act (HMTUSA). Of particular note were the federal registration and permitting programs. Additionally, the members heard from a representative of industry on the regulated community's perspective of the Alliance's mission.

During a discussion with Jack Fryer, counsel from the House Subcommittee on Surface Transportation, members questioned why permitting was mentioned in the title of Section 22 but nowhere else in the body of the section. Mr. Fryer pointed out that permitting was mentioned three or four times in various drafts, but it was deleted in the final bill. Mr. Fryer recommended that the

Alliance proceed with developing recommendations on permitting and submit a technical amendment that he could add to the upcoming Pipeline Safety Bill. Alliance members then requested that the staff proceed with drafting a technical amendment. (Note: The technical amendment has been included in the Pipeline Safety Act of 1992, which was signed by President Bush in November 1992.)

The Alliance then adopted Principles of Operation, which established the decisionmaking process for the Alliance and authorized the addition of **two** non-voting members, one representing industry and the other representing environmental and consumer interests. (A copy of the Principles of Operation is included as Appendix C to this report.)

After reviewing the draft work plan, the Alliance adopted the five-stage process by which it would satisfy the legislative mandates.

- Inventory existing state and local procedures and practices.
- Identify conflicts among states and localities for registering and permitting hazardous materials motor carriers and shippers.
- Propose new or modified approaches to reduce burdens on states, localities, and industry.
- Determine the feasibility of model programs for registering and permitting hazardous materials carriers and shippers, including options for separate programs for interstate, intrastate, international, and municipal motor carriers and shippers.
- Submit **final** recommendations to **USDOT**, including draft regulations, recommended forms and procedures, and an implementation plan.

Formation of the Four Subgroups

The Alliance authorized the formation of four subgroups to address specific areas of state hazardous materials transportation regulation. Industry representatives were invited to participate on the subgroups. The members determined that the subgroups would not be policy bodies. Therefore, when the subgroups could reach a consensus, contrasting points of view were brought to the full Alliance for consideration. For this reason, no distinction was made between voting members of the Alliance and industry representatives as to their role as subgroup members.

The four subgroups and their areas of responsibility included the following.

- **Shipper and Carrier Registration Subgroup**. Responsibilities included developing state requirements for registering hazardous materials carriers and shippers, the collecting and **distributing** of fees, and defining the relationship between a state registration program and other state and federal motor carrier regulatory activities.
- **Shipper and Carrier Permitting and Licensing Subgroup**. Responsibilities included developing state requirements for permitting hazardous materials carriers and shippers, examining collection and **distribution** of fees, and defining the relationship between a state permitting program and other state and federal motor carrier regulatory activities.

- Operational Issues Subgroup. Responsibilities included developing procedures for obtaining and processing permit and registration forms, ensuring collection and accessibility of data, and reviewing other issues related to the logistics of operating a registration and permitting program.
- Audit and Enforcement Subgroup. Responsibilities included developing procedures by which states enforce compliance with hazardous materials transportation requirements and defining the relationship of enforcement and auditing programs to other state and federal motor carrier regulatory activities.

Each subgroup was asked to examine current state practices, identify the extent to which state practices are uniform, identify barriers to uniformity, and make recommendations for criteria on which a uniform state program would be based.

At the initial meeting of the subgroups, held on the second day of the Alliance meeting, members elected subgroup chairs and vice-chairs, identified preliminary tasks and required staff support, and agreed on sites and dates for subsequent subgroup meetings.

Each subgroup met twice following the January 1992 session of the full Alliance. Concurrently, staff designed and conducted a survey of all current state hazardous materials, hazardous wastes, and radioactive transportation registration and permitting findings.

Second Meeting of the Alliance

The survey results and the findings and recommendations from each of the subgroups were presented to the full Alliance at its second meeting in Milwaukee, Wisconsin, in June 1992. This information was also included in a report titled *Alliance Phase One: Subgroup Reports*.

With a better understanding of the current picture of state hazardous materials transportation regulation, the Alliance determined that it was possible to develop a preliminary design of a model uniform program. The Alliance voted to consolidate the existing four subgroups into two subgroups with the following purposes.

Registration and Permitting Subgroup. To address the application requirements and procedures by which states would issue hazardous materials transportation registrations and permits. Within this subgroup, the Alliance also established a local issues task force to address the relationship between local regulatory programs and an eventual state uniform program.

Audit and Enforcement Subgroup. To look at post-issuance activities including methods by which the states could monitor and enforce the uniform registration and permit requirements.

The Alliance also adopted a series of assumptions and principles that would guide staff in drafting the first version of the model program. (The final set of assumptions are presented in Section 4 -- The Model Program.)

Third Meeting of the Alliance

At its third meeting in St. Louis, Missouri, in September 1992, the Alliance reviewed recommendations developed by the subgroups related to the Uniform Program. Initial recommendations included the information requirements for uniform registration and application, a list of potential enforcement activities, accommodation of local hazardous materials transportation concerns within the Uniform Program, and a preliminary decision to support the concept of a reciprocal permit.

Prior to this meeting, staff circulated a draft copy of the first iteration of the Uniform Program document to state hazardous materials and hazardous waste transportation program administrators. They indicated that hazardous waste transporters had more stringent information requirements and reviews than general hazardous materials transporters.

In response to these concerns, the Alliance established a task force on hazardous waste transportation that met in Newark, New Jersey, on November **23, 1993**. At the task force meeting, the concept emerged of a three-part application to accommodate the more stringent information requirements for hazardous waste haulers.

Finally, the Alliance authorized staff to develop a pilot project by which three or four states would test the provisions of the Alliance's recommended Uniform Program and application form before the Secretary of Transportation promulgated the final rule. The primary objectives of the pilot effort were to:

- test the feasibility of the various provisions of the Uniform Program;
- identify barriers to state implementation of the Uniform Program including the administrative and fiscal burden associated with state implementation; and
- determine whether the Uniform Program increased or decreased industry compliance with state hazardous materials transportation safety requirements.

Between the third and fourth meetings of the Alliance, both subgroups refined provisions **in** the drafts of the Uniform Program and application form. The audit and enforcement subgroup focused on the concept of in-state enforcement and the role of the national repository as an information clearinghouse to address concerns that had been raised by states about a reciprocal permit program.

Fourth Meeting of the Alliance

At its fourth meeting in San Antonio, Texas, in March 1993, the Alliance **confirmed** its support for a reciprocal program and a Part III disclosure form for hazardous waste haulers. Much of the meeting was devoted to discussions about the particular requirements associated with the Part III disclosure and the authority of states other than the base state to enforce safe transport of hazardous materials by motor carriers while operating within non-base states.

Based on agreements on general principles, the Alliance directed staff to prepare final drafts of the Uniform Program and registration/permit application. Additionally, with the assistance of pro **bono** legal counsel from the Washington firm of **Jenner & Block**, the staff was charged with

preparing a first draft of a regulation that, if promulgated by the Secretary, would implement the Alliance's recommendations.

Several task forces were established to address outstanding issues such as dispute resolution and public participation in the application review process.

Fifth Meeting of the Alliance

The primary purpose of the fifth meeting, held in St. Louis, Missouri, on May 23-25, 1993, was to resolve any outstanding issues. Agreement was reached on the Part III disclosure requirements for hazardous waste transporters, in-state enforcement authorities, the method by which motor carriers would select their base state, and public participation in the permit review process.

Legal counsel Don Verrilli presented the initial draft of regulatory language to implement the Alliance's policy recommendations. He also fielded questions from the Alliance about the draft regulation, several provisions within the Uniform Program, and the potential for preemption of current state programs.

At the end of the meeting, the Alliance adopted the policy preferences contained in the Uniform Program and application as amended during the two-day meeting. The vote was subject to technical corrections to ensure that the final report to the Secretary was consistent with adopted policies. Staff outlined a process by which members of the Alliance would have three additional opportunities to review the draft report—including the Uniform Program document, the application and instructions, and the regulatory proposal—before it was submitted to USDoT.

Communications Strategy

Throughout the existence of the Alliance, members and staff have taken steps to inform state officials, the regulated industry, and other interested parties about the group's effort. The primary communications vehicle was *TRANSLINES*, a newsletter published after each full Alliance meeting and distributed to approximately 2,400 individuals and/or organizations.

Additionally, Alliance members and staff made presentations at many meetings of state officials (e.g., Northeast Waste Management Officials' Association, National Association of Regulatory Utility Commissioners Transportation Specialists) and the regulated industry (e.g., National Tank Truck Council).

Finally, Alliance members and staff were interviewed for articles in many association newsletters and publications.

State Hazardous Materials Regulation

The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) and its predecessor, the Hazardous Materials Transportation Act of 1974, embody the concept of joint state-federal regulation of hazardous materials transportation. In general, the federal government is preeminent in regulation, but the states' responsibility to protect public health and safety is recognized.

The U.S. Department of Transportation (USDOT) has sole power to regulate designation of materials, packaging, placarding, and shipping papers. Routing is a joint responsibility—USDOT sets guidelines and the states follow them with input from local governments. In most other regulatory areas, states may adopt regulations that are “substantively the same as” federal requirements. In *the Federal Register* on August 1, 1991, this was interpreted by the USDOT Research and Special Programs Administration to mean “conforming in every significant aspect”

Requiring motor carriers to obtain permits for the transportation of hazardous materials is an important state regulatory activity that helps ensure public safety. Registration requirements provide states with revenue and, frequently, assurances from the registrant that applicable rules and regulations will be observed. Other regulatory activities besides permitting and registration include shipment notification, reporting of spills and incidents, liability and financial responsibility requirements, time-of-day restrictions, bridge and tunnel restrictions, emergency management planning and response requirements, training of personnel, routing, inspections, and enforcement and record-keeping requirements.

Registration and Permitting Overview

All but nine states have some type of permitting and/or registration program for hazardous materials transportation. The following matrix indicates the nature of these programs in each state. (The *Alliance Phase One Subgroup Reports*, June 1992, profiles each state program.)

| | Hazardous Materials | | Hazardous Waste | | Radioactive Materials | |
|---------------|---------------------|----------------|-----------------|------------|-----------------------|-------------|
| | Registration | Permitting | Registration | Permitting | Registration | Permitting |
| Alabama | | | | x | | |
| Alaska | | | | | | |
| Arizona | | | x | | | |
| Arkansas | | | x | | | |
| California | cargo tanks | reg+lpg tank | | x | | |
| Colorado | | x | | | | |
| Connecticut | | | | x | x | |
| Delaware | | | | x | | |
| DC | | explosives | | | | |
| Florida | | | x | | | x |
| Georgia | | pcb/lng | | | | x |
| Hawaii | | | | | | |
| Idaho | x | | | x | | |
| Illinois | | | x | | | |
| Indiana | | | | | | |
| Iowa | | | | | | |
| Kansas | | | | x | | |
| Kentucky | | x | x | | | |
| Louisiana | | lpg/explosives | | x | | |
| Maine | petroleum | | | x | | |
| Maryland | | tank trucks | | x | | hlw/tunnels |
| Massachusetts | | lpg/explosives | | x | | x |
| Michigan | x | x | | x | | x |
| Minnesota | x | | | x | | |
| Mississippi | | | | | | x |
| Missouri | | | | x | | |

| | | | | | | |
|----------------|------------|----------------|---|----|------|----|
| Montana | | | | x | | |
| Nebraska | | | | | | |
| Nevada | | x | | | x | |
| New Hampshire | | reg+driver | | x | | |
| New Jersey | | tank truck/lpg | | x | | x |
| New Mexico | | | | | | x |
| New York | | port authority | | x | | x |
| North Carolina | | | | | | |
| North Dakota | | | | | | |
| Ohio | x | | x | | | |
| Oklahoma | | | | x | | |
| Oregon | x | | x | | | x |
| Pennsylvania | x | turnpike | | x | | x |
| Rhode Island | | | | x | | x |
| South Carolina | | | | x | | x |
| South Dakota | | | | | | |
| Tennessee | | | x | | | x |
| Texas | | lng/cng | | | | |
| Utah | | lpg | | | | |
| Vermont | limited | | x | | | x |
| Virginia | | tank truck | | x | x | |
| Washington | | | | | | x |
| West Virginia | | | | | | |
| Wisconsin | x | | | x | | |
| Wyoming | pesticides | | | | trip | x |
| Totals: | 11 | 17 | 9 | 23 | 4 | 17 |

A total of eighty-one state-run programs exist. Five states require annual permits or licenses (California, Colorado, Kentucky, Nevada, and New Hampshire) for the shipment of all placarded hazardous materials. A separate hazardous waste permit or license is required by twenty-three states (Alabama, California, Connecticut, Delaware, Idaho, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and Wisconsin). Sixteen states require a permit or license for the transportation of radioactive materials (Florida, Georgia, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia).

Different types of radioactive materials are covered by these permits. The District of Columbia and eight states require permits for a particular commodity like liquid petroleum gas or explosives (California, Georgia, Louisiana, Massachusetts, Michigan, New Jersey, Texas, and Utah). Four states require them for cargo tankers (California, Missouri, New Jersey, and Virginia). Permits are issued by transportation departments, public utility commissions, boards of health, environmental protection agencies, natural resource departments, and fire marshals. Registration is required by eleven states for various placarded hazardous materials shipments (California, Idaho, Maine, Michigan, Minnesota, Ohio, Oregon, Pennsylvania, Vermont, Wisconsin, and Wyoming), by nine states for hazardous waste (Arizona, Arkansas, Florida, Illinois, Kentucky, Ohio, Oregon, Tennessee, and Vermont), and by five states for radioactive materials (Colorado, Connecticut, Nevada, Virginia, and Wyoming).

Nine states have no registration or permitting programs for hazardous **materials** transportation (Alaska., Hawaii, Indiana, Nebraska, New Mexico, North Dakota, South Dakota, Washington, and West Virginia). Iowa charges a fee only for hazardous waste transportation.

The legislative intent behind these registration and permitting regulations is generally to protect public health and safety and to prevent environmental harm. State regulations reflect different perspectives.

- Alabama is concerned about its increasing role as the nation's final burial ground for hazardous waste.
- Ohio enacted its new legislation after a disastrous train derailment that precipitated an evacuation of 35,000 people.
- Alaska is cognizant of its status as the last frontier and wishes to be a responsible trustee of the environment for present and future generations.
- The Georgia General Assembly has found that "the transportation of hazardous **materials** on the public roads of this state presents a unique and potentially catastrophic hazard to the public health, safety, and welfare of the people of Georgia" and that control and regulation of such transportation is needed to minimize the hazard.
- Delaware's legislation states that "hazardous materials are essential for various industrial, commercial, and other purposes and that their transportation is a necessary incident of their use, and therefore, such transportation is required for the employment and economic property of the people," but that the risk involved in the activity be kept at a minimum "consistent with technical feasibility and economic reasonableness."

These varying perspectives have produced the variety of regulatory schemes and permitting approaches described above.

Section 3 THE ALLIANCE'S DELIBERATIONS

Alliance Objectives

At the outset of its deliberations, the Alliance established a series of guiding principles and assumptions. (A complete listing of these assumptions are provided in Section 4, The Uniform Program.) Primary among all the assumptions was the consensus opinion that the overriding objective of the Uniform Program was the safe transportation of hazardous materials. Through uniformity, the industry would have a clear understanding of the requirements and procedures for transporting hazardous materials in states that elected to regulate motor carriers in accordance with the federal regulation. In turn, consistent expectations across all states will hopefully raise the level of compliance.

Secondly, the Alliance recognized the need to balance the **costs** and benefits of its recommended program both for states administering the program and for the regulated industry. Toward this end, the Alliance examined procedures that would address industry's concerns about excessive duplication of effort without shifting the burden to state administration of the program.

Finally, the Alliance recognized that its mission was not to create a state regulatory program from scratch. Rather, the Alliance was charged with bringing uniformity to the existing myriad of state programs already in place. Therefore, the Alliance adopted the position that the recommended Uniform Program would place no requirement on the motor carrier industry that was not already part of at least one existing program.

Overview of Major Issues

While the Uniform Program and regulations are based on score-s of individual decisions, many of these were readily adopted based on existing uniformity within the states or a broad consensus among the Alliance members. There were, however, fourteen major issues that needed to **be** resolved prior to adoption of the **final** Uniform Program.

Reciprocity. While Section 22 of HMTUSA does not mandate reciprocal state registration and permitting of hazardous materials carriers, the Act gave the Alliance the authority to explore the feasibility of a base state system. At its **second** meeting in Milwaukee, Wisconsin, on June **18-19, 1992**, the Alliance supported the goal of a reciprocal system. The Alliance position is contained within the assumptions outlined in the Preliminary Uniform Model Program.

Both state registration and permitting will be conducted under a base state approach. There will be full reciprocity among participating states to accept registration and permits and to take actions against a carrier that might result in suspension or revocation of the carrier's right to transport hazardous materials.

While a reciprocal system would have major benefits for industry, Alliance members also identified benefits to the states. Primary among these is the distribution of work associated with permitting carriers among the states. Focusing on a smaller population, each state should be able to direct more attention to reviewing carriers based in that state.

The second benefit to states is the greater "economic penalty" to an irresponsible *carrier* from the suspension or revocation of a national permit. Under the current system, a state can only act on a carrier's right to operate within its borders.

A number of states expressed concern about their ability to regulate the transport of hazardous materials under a reciprocal permitting program. The primary difference between the reciprocal program and current state program is that a carrier would apply to a single state for a national (as distinguished from a federal) permit that indicates that it has met the qualification requirements set forth in the uniform state program. In actuality, the national permit translates into the authority to transport hazardous materials in any state that participates in the Uniform Program as long as the carrier pays the appropriate registration fee and complies with the certifications contained in the permit.

In discussions with current state program administrators, especially those associated with state hazardous waste programs, the Alliance identified two compelling reasons why states are leery of a reciprocal system. Surprisingly, the state program administrators (with one exception) were not overly concerned about the level (or lack) of effort a base state would use to review the permit application.

The primary reason states gave for wanting to continue to issue their own permits has more to do with post-issuance enforcement. State administrators view the permit as "something they can pull" if a carrier acts irresponsibly or violates state transportation or environmental laws. Their concerns focused on the delegation of enforcement authority to the base state. "Will I have to rely on the base state to keep bad actors off my roads?"

The second reason deals with the loss of information about hazardous materials transporters who are based in other states. How would non-base states get information about the operations of carriers that are not based in their state?

The Alliance views both of these issues as legitimate concerns that had to be addressed in any reciprocal program. A full discussion of the authority of states to enforce responsible behavior by carriers when the carrier is within a given state is provided below in the section on in-state enforcement. Concerning the availability of data on carriers that operate within a state's borders, the Alliance views this as one of the primary functions of a national repository. Information on major violations of transportation and environmental laws and regulations as well as real-time data on suspensions, revocations, and reinstatements will facilitate both state review of permit applications and on-road enforcement.

Hazardous Waste Transportation. Regulating the transportation of hazardous waste, a small but environmentally important subset of hazardous materials, is popular with state governments. Thirty-three states specifically permit or register transporters of hazardous waste, while only fourteen target radioactive materials, and eleven permit or register all placarded hazardous materials or other subsets like liquid petroleum gas. These thirty-three hazardous waste programs represent a diversity of approaches with regard to stringency and coverage.

As the Alliance became informed on the range of state programs, members had three areas of concern. The first was the relationship between HMTUSA and the Resource Conservation and Recovery Act (RCRA). The Alliance posed the following questions. Where does one end and the other begin? HMTUSA is a ceiling and RCRA is a floor in terms of allowances for state

stringency. Are state transportation permits that involve RCRA preempted by HMTUSA? Gray areas exist regarding what is preempted by HMTUSA and what is allowed under RCRA.

HMTUSA appears to be preeminent when it comes to the transporting of hazardous wastes. An EPA decision delegating final RCRA authority in California stated that motor carrier permits are not part of the RCRA authority and deferred to HMTUSA on issues of transportation. The Alliance based its recommendations on this assumption. In addition, the recent preemption decision in Illinois by the Research and Special Programs Administration under HMTUSA indicates a fairly rigid adherence to the “substantively the same as” standard.

Second, though hazardous waste is a small proportion of the overall amount of hazardous materials transported annually, it has attracted great regulatory attention. The argument put forth by the North East Waste Management Officials Association (NEWMOA) representing state hazardous waste program administrators and others to justify greater attention stems from the negative economic value associated with hazardous waste. Since it is a waste product, hazardous waste has a greater potential for mismanagement than hazardous materials (e.g., petroleum), which have economic value.

Strict transportation provisions are needed to ensure proper handling of hazardous waste. Such provisions include, in many cases, a disclosure statement that applicant companies complete to disclose a variety of information related to a company’s financial position, history of legal proceedings, employment history of key employees, and information on business relationships. The Alliance decided to adopt a disclosure statement as part of the uniform state program to address these issues.

A third area of concern is the threshold for regulation of hazardous waste. The Alliance originally decided that quantities requiring a placard or labeling (for certain bulk quantities) under federal regulations would be subject to registration and permitting under the Uniform Program. To ensure that hazardous wastes were included within this criterion, the Alliance filed comments with RSPA supporting the use of the Class 9 placard, which covers hazardous wastes and hazardous substances, so that these substances would be included in the Alliance’s program. At a subsequent meeting, California and Missouri, among other states, pointed out that a significant number of hazardous waste shipments do not meet this threshold in the absence of a Class 9 placard. In the end, the Alliance decided to require that **all** quantities of hazardous waste that require the use of the federal uniform hazardous waste manifest are subject to the uniform state program.

To address these concerns, the Alliance adopted a three-part application that gives the states the option of requiring a more stringent review of hazardous waste transporters. Representatives of the hazardous waste industry have argued that the existence of a Part III business disclosure requirement is unfair because it places more requirements on one subset of the hazardous materials **transport** industry. **The** Alliance did not create this situation. Historically, states have placed more stringent requirements on hazardous waste haulers.

Disclosure and the Three-Part Application. State participation in the uniform state program is voluntary. States that choose not to regulate in this manner are not forced to do so. And within the program, a state may choose to register only; register and permit **only**; or require registration, a permit, and the hazardous waste disclosure. Flexibility was built in to allow states to proceed in the manner they choose, since a wide range of regulatory activity currently exists. However, once

a state selects the level of regulation that is appropriate for its purposes, that state must use the uniform state procedures associated with that level of regulation.

For the waste concerns mentioned above, a disclosure statement was adopted by the Alliance as Part 111 of the application. At a special task force meeting of the Alliance to address hazardous waste issues in November 1992, representatives from several states including California, Massachusetts, New Jersey, New York, and Rhode Island described the use of disclosure requirements to regulate hazardous waste carriers. These states were concerned that the Alliance had failed to recognize that hazardous waste transportation must be regulated more strictly due to its negative economic value and they feared that their strict and successful programs would be undermined.

After extensive deliberations, the Alliance addressed most of the group's recommendations. Key among them were:

- requiring disclosure of business activities and environmental violations by hazardous waste transporters, and
- giving individual states the ability to suspend or revoke the ability of a transporter to operate in a non-base state "for cause."

The recommended disclosure form requires a listing of all facilities owned or operated; identification of key management personnel, including fingerprint cards, financial information; related business concerns; and legal proceedings in which the applicant company or key personnel have been involved.

The extent of financial information requested of a company on the permit form was the subject of much debate. The Permit Subgroup believed that some financial information, such as an income statement, balance sheet, and statement of liability, was important data to help in assessing a carrier's qualifications to transport hazardous materials. Therefore, this information should be required for all hazardous materials transporters to help prevent financially troubled companies from cutting corners on safety.

However, members of the Enforcement Subgroup thought there should be a distinction between hazardous materials transporters and hazardous waste transporters in terms of the need for financial information. Industry representatives pointed out that no current state hazardous materials transportation permit requires this kind of financial information and that the Alliance had agreed not to introduce any permit requirements that are not part of a current state program. In the end, the financial information was placed in the Part III Hazardous Waste Disclosure, since all agreed this was useful and necessary in order to evaluate hazardous waste motor carriers,

To allow a base state to conduct a higher level of inquiry in certain areas of concern during the permitting process, the Alliance adopted the concept of "trigger questions." Areas of concern include an applicant's history of compliance, accident and cleanup record, history of fines, and recent out-of-service record. Trigger questions are designed to allow further investigation of an applicant based on a given response.

This idea resulted from the philosophy adopted by the Alliance not to require volumes of information from applicants, but rather to design questions that "flag" potential "bad actors."

Specific answers **to** these questions mean that a more in-depth inquiry is necessary. Such inquiry would include examining the applicant's records and operations, consulting court documents, and consulting jurisdictions where accidents and spills occurred.

The regulated industry has expressed a **concern** that trigger questions will generate open-ended searches for information that will not be subject to any deadlines. A structured and uniform system of trigger questions is an essential element of the uniform process, as are reasonable deadlines for state action. The Alliance determined that additional investigations **to** trigger questions would not be limited. A minimum amount of information will be required if a question is triggered, but a state can require more information in the **course** of an investigation if necessary.

Industry representatives also raised a question about excessive fees for background checks under Part III of the application. Their concern focused on states that charge the same fee annually even when a company's operations remain relatively static from one year to the next. Furthermore, industry representatives believed that both companies and states could save money if a company was able **to** refer the state **to** a previous investigation of an employee rather than require a duplicate investigation.

Local Government Registration and Permitting. At least twenty-seven localities require **motor** carriers to register or obtain a permit before they are allowed **to** carry hazardous materials through their jurisdictions. Many more jurisdictions have specific regulations that apply **to** shippers and carriers domiciled in their own locality. Local governments **maintain these** regulations because there are a number of hazardous materials transportation Concerns that are not always addressed at the state or federal level.

Local emergency personnel are generally the first responders to a hazardous materials spill or accident. State and local governments must maintain trained emergency staff if hazardous materials spills are **to** be cleaned up efficiently, with the least amount of harm to the surrounding population and the environment. If a locality experiences a significant hazardous materials accident, that jurisdiction will feel a major impact in terms of the **environment, public health,** and economic stability.

It is for this **reason** that local government officials are concerned with the types of materials entering their jurisdiction and the number of carriers or loads that are going through each year. To ensure the safety and public health of a community, many local governments require permits or registration for hazardous materials transportation and assess a fee in connection with the program.

Local permits for hazardous materials transportation can generally be obtained from the fire or police chief of that jurisdiction. Localities are often concerned with subsets of hazardous materials such as radioactive materials, hazardous waste, or flammable liquids. Often, localities will require shippers and carriers **to** notify local emergency officials before transporting radioactive materials through the city or county.

At its second full meeting in Milwaukee, Wisconsin, the Alliance created a **Local** Issues Task Force. It was created to address the safety and financial needs of communities that currently operate registration and permit programs. Task force members met in Newark, New Jersey, prior **to** a Permitting Subgroup meeting to discuss the potential role that local governments could play in the uniform model program.

The task force further discussed local needs in regard to hazardous materials transportation. They determined that the top five local needs to be met by a uniform program should be:

1. protecting local citizens;
2. obtaining resources to protect citizens (Le., funding for equipment, training, and enforcement programs);
3. hazardous materials flow information—knowledge of what types of material are coming through and in what quantities;
4. ensuring routing for both "national route" shipments and off-route shipments traveling on local roads not designated as hazardous materials routes through HMTUSA; and
5. coordinating resources between adjacent localities.

Local representatives expressed concern about obtaining financial support from states through a state registration program. Often, it takes the state government many months to distribute money apportioned to localities through federal grants or state legislation.

The task force determined that the major reasons for continuing local registration and permit programs are:

- assessing the type and amounts of materials going through the jurisdiction;
- addressing the concerns of local citizens regarding hazardous commodities; and
- raising the necessary revenues for local planning, training, and enforcement.

The task force explored many possible ways to include local programs and /or local officials in the Uniform Program. These possibilities include:

- allowing programs for certain localities only (grandfathering);
- allowing a city to take the state role if the state decides not to have a registration or permit program; and
- piggybacking the local fee onto the state fee (the state would then transfer the money collected under the local fee to the locality requesting the fee).

The task force determined that a locality has a right to have a registration program if the state elects not to operate such a program. To avoid a proliferation of registration programs, members of the Alliance decided that the state must designate one entity to serve as the "base state" for purposes of registration. In other situations, where the state is conducting a registration or permitting program, the base state fee would be based on the aggregate state and local need and distributed to the localities by the "base state" entity.

With respect to permitting, the task force determined that any level of government can have permit programs. The permit program must be the uniform, reciprocal program as promulgated by

the Secretary of Transportation and must be a signatory to the base state agreement. Local permitting programs would be subject to the same peer review and accreditation as required for state programs under the Uniform Program.

At its September 1992 meeting in St. Louis, Missouri, the Alliance voted to include the local provision (outlined above) in the Uniform Program. These concepts will be tested during the pilot project to determine the feasibility of having smaller localities operate permit programs. A major question is whether a locality would have the industry base to support the costs associated with the permitting program.

As drafts of this report were going through the review process, some members raised questions concerning potential contradictions between the local permitting provisions and the Alliance's support for one-stop shopping. This issue was addressed by the pilot program interim **governing** board at its first meeting in Columbus, Ohio, on November 2-3, 1993. The board determined that in instances where a locality, operating an accredited permit program, is not the entity **responsible** for administering the base state registration program, the locality must execute an agreement with the base state entity. The agreement would allow the locality to serve as an agent of the registering entity for purposes of collecting and forwarding the registration application (Part **I** of the uniform application) and the appropriate fees. The base state registering entity would review the application to ensure that it was complete and that the carrier had correctly calculated the apportioned fee. Before issuing a uniform permit, the locality must obtain notification from the base state registering entity that the applicant had satisfied the requirements for a valid registration under the Uniform Program.

In-State Enforcement. As noted above, the Alliance's support of a reciprocal program for base state issuance of registrations and permits was contingent on the primacy of state law to enforce a motor carrier's behavior while it is transporting hazardous materials on that state's highways. This provision of the Uniform Program was developed after lengthy discussions and many questions about the relationship between the state in which a violation occurred and the state that issued the permit (i.e., the base state).

- Would the state in which the violation occurred have to wait for the base state to investigate an incident?
- Could the state in which the violation occurred take unilateral action against the carrier up to and including prohibiting the carrier from transporting hazardous materials on its highways?
- Could the carrier still operate while the base state was considering whether to suspend or revoke the national permit?

The Alliance strongly believes that the individual states have the right to enforce responsible behavior by motor carriers when they are operating within their respective borders. If a motor carrier **acts irresponsibly** while transporting hazardous materials, the state in which the violation occurs **must** have the authority to act immediately.

While the Alliance considered the possibility of uniform **finer** and penalties, the members felt that states should have the flexibility to determine the severity of, and penalties associated with different violations. Furthermore, the mandate in Section 22 relates only to forms and procedures

associated with the issuance of registrations and permits. The Alliance took note of current efforts by Commercial Vehicle Safety Alliance (CVSA) to establish uniform penalties for vehicle safety violations, but felt that the adoption of the recommended penalties was best left to the individual states.

Specific enforcement powers are listed in the Uniform Program. The list of enforcement powers is not intended to be all-inclusive. It may be used by the base state—for purposes of issuing, denying, suspending, or revoking the national permit—or any other state in which a motor carrier operates to restrict or prohibit operations as a result of violations within the jurisdiction.

The success of the reciprocal system is also dependent on the ability of states to share information obtained through these enforcement activities. Therefore, the Uniform Program and proposed regulations provide specific authority to participating states to gather information from motor carriers and to share such information with other states and the national repository for purposes of implementing the program (i.e., issuing the national registration and/or permit). This provision is essential to address current statutes in some states that place restrictions on the gathering and use of proprietary information.

Several states questioned whether specific programs currently authorized in their individual states would be protected by the in-state enforcement provision. The Alliance elected not to speculate about the validity of these programs since any final decision on preemption under Section 22 would be based on the Secretary's and the courts' interpretation of the statute and regulation. Consistent with the in-state enforcement provision contained in the Uniform Program, the Alliance indicated that such programs should be judged on the following principle. Does the state activity represent a prerequisite for issuance of the national registration and permit? If such state activities are not prerequisites and represent post-issuance enforcement activities by a state in which a motor carrier operates, a strong argument can be made that they are not preempted under Section 22.

The Alliance recognizes that state enforcement activities also will be subject to review under the two-part test in Section 13 of HMTUSA. First, is compliance with both the state requirement and any requirement of HMTUSA or of a regulation issued under HMTUSA possible? Second, does the state requirement, as applied or enforced, create an obstacle to the accomplishment of HMTUSA or any regulation issued under HMTUSA? These questions will only be answered by the USDOT and the courts once the regulation becomes effective.

Calculation of Fees. There was considerable discussion by the Alliance relating to the calculation of registration fees for motor carriers covered under the uniform state program. Industry representatives, in particular, expressed concerns about flat fees because of recent court decisions that have rejected the concept of flat fees, particularly the 1991 decision in *American Trucking Associations v. Secretary of State (Maine)* that negated Maine's flat charge of \$25 per truck. The court implicitly rejected, by not addressing, the state's argument that a flat hazardous materials fee was equitable under the Hazardous Materials Transportation Uniform Safety Act (HMTUSA).

At the third meeting of the Alliance in St. Louis, Missouri, on September 21-22, 1992, the members addressed this issue. The Alliance's success in achieving consensus on this issue was tempered by three factors.

1. Section 22(d)(3) of HMTUSA states, "Regulations issued under this section shall not define or limit the amounts of any fees which may be imposed or collected by any State." There is some question about whether this language refers only to the fee rate or the fee structure itself. For example, could the regulation that results from the Alliance recommendation actually prohibit any type of flat fee?
2. While the courts have indicated in certain instances that a flat rate per vehicle fee is not equitable, the Alliance staff was not aware of any **court** case involving per company flat fees. The staff requested that the Alliance legal counsel further research this issue and provide a more comprehensive overview of current case law.
3. Many states still operate with some form of flat fee structure. While industry has indicated that it intends to challenge such fees wherever they exist, the Alliance questioned whether it should pre-judge these challenges by recommending that flat fees not be permitted under the Uniform Program.

There was **consensus** among the Alliance members that any fee should be equitable. However, achieving an operational definition of equity was much more difficult. Some elements of equity did emerge during the Alliance's deliberations. For example, the burden of a state hazardous materials transportation program should be divided among all who engage in the transport of hazardous materials. At first glance, this suggested that a state should have both a carrier and shipper registration fee under the Uniform Program. However, under further examination, it became clear that, in some states, shippers are already assessed fees to support the safe transport of hazardous materials through other programs (e.g., the state hazardous waste program). Therefore, the Alliance chose not to recommend that states that elect to register hazardous materials transporters must register both shippers and carriers under the program. They suggested that states look at the range of fees that support the state's hazardous materials transport programs and apply the principle of equity to its aggregated revenue-generating activity.

A staff survey of state programs showed that most states calculated registration fees in one of three ways. They either charge a flat fee that covered the carrier (that is, there was not a per truck assessment), charge a per truck fee, or use a combination of the two. Ohio is an exception. It has a graduated fee schedule based on the total weight of hazardous material transported annually within the state.

Throughout the Alliance's deliberations on possible fee structures, there was much confusion about the calculation and distribution of fees. This may be a result of a perception by some that the base state hazardous materials registration program should emulate the International Registration Plan's (**IRP**) method of registering interstate commercial vehicles. For purposes of the proposed state uniform program, this approach only means that the base state serves as an agent for all states that register or permit hazardous material motor carriers. The primary difference is that the proposed uniform state program does not envision registering individual vehicles as is the case with the IRP. Rather, it focuses on the carrier (company) as a single registered entity.

As a result of the discussions at the St. Louis meeting, the Alliance decided to strongly **encourage** states to adopt fee structures that take into account the apportioned hazardous materials transportation activities by a carrier within their state. (It should be noted that the proposed options apply only to carriers. As described in the model program description, states that elect to register shippers under the Uniform Program view a facility as operating 100 percent at its

location. Therefore, any per company or facility fee would not be apportioned even if the shipper offers hazardous materials that are transported across state lines.)

An apportioned fee could be levied based on either a per carrier fee or an apportioned number of vehicles involved in the transport of hazardous materials. The following examples demonstrate how the fee would be calculated under the two options. For purposes of both options, the fee will be calculated for the same hypothetical carrier with the following characteristics.

- Carrier XYZ has a fleet of 1,000 vehicles.
- Its activity in state ABC, based on its IRP mileage, is 20 percent of its total activity.
- Thirty percent of its total activity involves the transport of hazardous materials.

Apportioned Per Carrier Fee

State ABC assesses an apportioned fee of \$1,000 for every carrier that transports hazardous materials within its borders. To calculate its fee for state ABC, carrier XYZ uses the following formula:

$$\% \text{ state activity} \times \text{state fee} = \text{apportioned carrier fee}$$

The following example demonstrates how the formula would work.

$$20\% \text{ state activity} \times \$1,000 \text{ per carrier fee} = \$200 \text{ apportioned carrier fee}$$

The base state would collect \$200 on behalf of state ABC as part of the lump sum payment of registration fees for all states that would then be distributed to the states by the base state.

Apportioned Per Truck Fee

State ABC assesses an apportioned fee of \$30 per truck that transports hazardous materials within its borders. To calculate its fee for state ABC, carrier XYZ uses the following formula:

$$\% \text{ state activity} \times \% \text{ hazmat activity} \times \text{number of vehicles} \times \text{state fee} = \text{apportioned carrier fee}$$

The following shows how this formula would be applied.

$$20\% \text{ state activity} \times 30\% \text{ hazmat activity} \times 1,000 \text{ vehicles} \times \$30/\text{truck fee} = \$1,800 \text{ apportioned carrier fee}$$

In other words, of the 1,000 vehicles operated by carrier XYZ, 200 vehicles would be apportioned to state ABC based on its IRP mileage. Of those 200 vehicles, 30 percent or 60 vehicles would be designated as transporting hazardous materials, even though the actual distribution of hazardous materials might involve every vehicle in the carrier's fleet.

The second option appears to be more equitable. This is based on the following likely scenario. State ABC is applying its fee structure to two companies. One is a totally intrastate carrier of hazardous materials with five vehicles in its fleet. The second carrier is a national company with 10,000 vehicles and an IRP allocation of 10 percent in state ABC and 10 percent of its activity involving the transport of hazardous materials.

Under the per carrier apportioned fee, the fee for the intrastate carrier would be 100 percent of the state fee. Again, using the \$1,000 per company fee, the intrastate carrier would be assessed the entire \$1,000. The national company, however, would only be assessed \$100, based on its IRP mileage percentage in the state. The intrastate company would pay \$1,000 to cover five vehicles. The national carrier would pay \$100 (per carrier fee times IRP percentage times hazmat percentage) to cover its vehicles (100 apportioned hazardous materials vehicles). This situation becomes even less equitable as the percentage of hazardous material activity increases. For example, if the national company's activity was 50 percent hazardous materials transport, the same \$100 would then cover 500 vehicles.

Under the second option, the fee would be assessed based on the number of vehicles transporting hazardous materials within state ABC. Using the same apportioned \$30 per vehicle fee, the intrastate carrier would be assessed \$150 (five vehicles times 100 percent state activity times 100 percent hazmat activity times \$30 per vehicle fee). In contrast, the national carrier would be assessed \$3,000 (10,000 vehicles times 10 percent state activity times 10 percent hazmat activity times \$30 per vehicle fee).

Again, the Alliance's position does not, at this time, recommend any single approach to the fee structure. There is, however, a consensus that any fee structure should be equitable (although the definition of equity is left to individual states) and the use of an apportioned method of fee calculation is strongly encouraged.

During the feasibility study, several states asked whether the base state would be allowed to recapture the cost of processing the registration through a processing fee that would be added to the base state's regular registration fee rates. The Alliance adopted the position that a base state, at its option, may include a fee for processing the base state registration application, provided such fee is reasonable. Furthermore, the state's registration fee rate (applied to all carriers that operate within the state) does not also include revenues for processing base state carrier applications (i.e., charging a carrier twice for processing the application).

Questions arose concerning how states would set their fee rates. Again, the law does not mandate any limits on state fees as long as revenues generated by the fees go toward the safe transport of hazardous materials including, but not limited to, emergency response planning and training, **enforcement**, improved regulation, carrier education, administration of hazardous materials transportation programs, and infrastructure improvements. The key, therefore, is to determine the amount of **annual** revenues required and the population to which the fee can be applied. The following example demonstrates how this might be done.

State ABC has determined it needs \$350,000 annually from the registration of hazardous materials carriers. Of the total sum, \$100,000 will be used for processing registration applications and distributing fees to the other states that participate in the base state registration program. There are approximately 2,000 carriers (interstate and intrastate) that will register in state ABC. Based on the apportionment formula described above, these 2,000 carriers utilize approximately 10,000 vehicles that qualify as hazardous materials transport vehicles operating in that state. The state would establish the following rate schedule to generate its needed revenues.

- A processing fee of \$50 per applicant (2,000 applicants times \$50 equals the \$100,000 needed for processing).

- A \$25 per truck registration fee (10,000 vehicles times \$25 equals the \$250,000 needed for hazardous materials programs).

How would this fee structure be applied to individual carriers? For purposes of demonstration, the examples of the intrastate carrier with five vehicles totally engaged in the transport of hazardous materials and the national carrier with 100 trucks apportioned to state ABC will be used.

Intrastate Carrier

| | |
|-------------------|----------|
| Registration Fee* | \$125.00 |
| Processing Fee | 50.00 |
| Total | \$175.00 |

*Five apportioned hazmat vehicles at \$25 per vehicle

National Carrier

| | |
|--------------------|------------|
| Registration Fee** | \$2,500.00 |
| Processing Fee | 50.00 |
| Total | \$2,550.00 |

**One hundred apportioned hazmat vehicles at \$25 per vehicle

Dispute Resolution. At the February 4-5, 1893, meeting of the Alliance Subgroup on Enforcement and Audits, the group discussed the range of disputes that might arise during implementation of the uniform state program. Of particular concern was the role of the proposed governing board in these disputes. At the members' request, staff prepared the following dispute resolution matrix. The matrix outlines the range of issues that might be disputed, the parties involved in the dispute, and the venue for resolving the dispute.

The group also discussed the authority and power of the governing board to enforce its decisions. The members unanimously agreed that since the agreement is a nongovernmental arrangement, it has no legal authority to take punitive action against a signatory to the agreement. Therefore, the power of the governing board lies in its ability to make recommendations to the Secretary of Transportation to take punitive action or preempt a state's program under the authority outlined in Section 22 of HMTUSA.

[Note: Both the International Registration Plan and the International Fuel Tax Agreement, which become mandatory under Section 4008 of the Intermodal Surface Transportation Efficiency Act of 1991, are also addressing this issue. In an opinion from its legal counsel, FHWA has suggested that these base state agreements include a range of sanctions, short of a preemption recommendation to the Secretary, that could be imposed by their governing boards. Past experience within IRP has been that, even though the decisions of the IRP Board were only advisory, they were taken into account by the courts. The interim governing board needs to monitor the IRP and IFTA efforts and revisit this issue during the pilot program.]

Finally, the Secretary of Transportation has ultimate administrative authority **over the** uniform state program. Therefore, a state or carrier could appeal any action by an individual state **or the governing** board to the Secretary. Staff proposes that the following scheme for dispute resolution be included in the **USDOT** regulation so that disputes will not be brought before the Secretary until the party initiating the dispute has exhausted its options under the proposed dispute resolution framework.

At its final meeting on May 23-25, 1993, the Alliance adopted the position that the by-laws of the base state agreement should contain policies and procedures related to dispute resolution. The members also agreed that the governing board of the base state agreement could issue binding interpretations of the agreement itself.

Dispute Resolution Matrix

| Issue Under Dispute | Parties to the Dispute | Venue |
|---|---|---|
| Disposition of an individual permit application. | Individual carrier versus the base state. | An appeal of the substantive evaluation of an individual permit application will be subject to the administrative and judicial procedures of the base state. The carrier may appeal to the governing board if it believes that the base state has not followed the "process" for evaluating permit applications. |
| Restriction or suspension of a motor carrier's authority to transport hazardous materials by a state other than the base state. | Individual carrier versus a state in which it operates. | An appeal of the suspension will be subject to the administrative and judicial procedures of the state that initiated the action against the carrier. |

| Issue Under Dispute | Parties to the Dispute | Venue |
|--|--|---|
| Conformity with the reciprocity provisions of the uniform state program (i.e., a state does not accept the national permit). | Individual carrier versus a state in which it operates. | The governing board will determine if the state is not in compliance with the uniform state program. If so, the board will make a recommendation to the Secretary of Transportation to take action against the state under provisions of Section 22 and the implementing regulations. |
| Improper issuance of a permit by the base state to an individual carrier. | Non-base state, another carrier, or a citizen versus the base state. | If the dispute is based on the substantive evaluation of the information contained in the permit application, any attempt to deny the permit is covered under the administrative and judicial procedures of the base state. If the dispute is based on "procedural" issues (e.g., the base state did not require the carrier to complete the uniform application), the appeal may be brought before the governing board. |
| Failure by the base state to conduct the required review of a carrier following an incident or violation that may result in suspension or revocation of the national permit. | Non-base state or citizen versus the base state. | The governing board will hear the dispute. Failure by the base state to take corrective action, if warranted, may result in a governing board recommendation to the Secretary of Transportation. |

| Issue Under Dispute | Parties to the Dispute | Venue |
|--|--|---|
| Suspension or revocation of the national permit. | An individual carrier versus the base state. | An appeal of the suspension or revocation will be subject to the administrative and judicial procedures of the base state. If the dispute hinges on a “procedural” issue (i.e., the base state did not conform with provisions of the uniform program), the dispute may be brought to the governing board. |
| Failure by a base state to distribute registration fees to other states. | Non-base state(s) versus base state. | The governing board will hear disputes between states related to the prompt distniution of registration fees collected by the base state on behalf of other states. [Note: The enforcement subgroup has recommended that late payments should include appropriate interest.] |

Public Participation. At the March 22-23, 1993, meeting of the Alliance, a task force was established to look at options for public participation and comment related to the permitting of hazardous materials transporters under the uniform state program. The task force made several recommendations related to the importance of public participation, the establishment of a complaint tracking and retrieval system by the national repository, notification of interested parties concerning a pending application, and public access to information retained in a central database.

The following is a brief summary of three major issues that were addressed by the task force in developing its **final recommendation**.

Public Notice. Publishing notice of permit application in major newspapers was rejected as too burdensome and too labor intensive. Notice in the Federal Register was rejected as too voluminous and not an effective means of reaching citizens. State public notice registers were deemed **to** be even more obscure than **the Federal Register** in the public’s view and burdensome in terms of paperwork.

Integrity of the Base State System Reliance on the reciprocal mechanisms of the base state agreement must be the key element to protect public **health** and safety. If a certain carrier with credentials issued by the base state is a continuing bad actor, both the carrier and the base state are subject to various sanctions under the proposed Uniform Program. The integrity of each state

program must be preserved to ensure confidence in the entire system. Mechanisms such as peer reviews and accreditation will be in place to ensure such integrity.

The Interstate Implications of a Base State System. A potential frustration for citizens is likely to be the fact that they must deal with officials in another state, who are not accountable to them except through the base state system. A good system will eventually weed out bad actors, but this concern should be addressed during the pilot test.

With some modifications, the task force's recommendations were adopted at the final Alliance meeting in May 1993. It was further agreed that the public participation function will be tested during the pilot program. Complaints filed during the pilot program will carry over into the national implementation of the Uniform Program.

Selection of Base State. Selection of its base state by a motor carrier is a crucial element of the reciprocal approach to registration and permitting contained in the Alliance's recommended uniform program. The Alliance's primary concern in determining the base state selection process was the potential of "state shopping" by carriers, if the carrier felt that one state might be less stringent than another. The major safeguards against this possibility are the uniform forms and procedures that states must use and a peer review process of state programs. However, the Alliance conceded that the program must still place some restrictions on the selection of the base state.

The Alliance also had adopted a provision supporting the establishment of "one-stop shopping" for motor carrier credentials. Therefore, it was imperative that the base state system be designed in such a way that a carrier would apply to only one state even if it operated in states that chose differing levels of regulation (registration only, hazardous materials, or hazardous waste) under the Uniform Program.

Under the recommended program, the applicant must first determine the states in which it operates and the highest "level" of regulation that those states conduct (this information will be provided in the motor carrier application packet). For example, if a motor carrier transports hazardous waste in a state that requires a registration, permit, and hazardous waste disclosure, then the carrier is obliged to apply for all three parts. However, the applicant cannot pick from states at random. The Alliance has determined that motor carriers must use the following hierarchy to determine the base-state.

- The first state to be considered as a base state must be the state in which the company maintains its principal place of business and keeps the central records related to hazardous materials transportation.
- If the state of domicile does not operate a registration/permit program, the applicant should use the state where the plurality of mileage was traveled in the previous business year-
- * If that state does not run a program, the applicant should use the state where the *next highest* percentage of mileage was traveled in the previous business year. The applicant should continue down the list of states until it reaches a state that operates a registration and/or permit program.

The above hierarchy should be followed for registration and permitting programs regardless of whether a motor carrier must have the Part III hazardous waste disclosure form to conduct operations in a given state. The base states that do not do the background investigations required in Part III will contract out the Part III section to the state in which the carrier records its highest percentage of miles traveled during the previous business year.

The Alliance determined that a base state should contract out the Part III hazardous waste disclosure section of the permit in order to limit the number of applications “Part III states” would have to process. Following the hierarchy, a state that operates all **three** sections of the Uniform Program (registration, permit., and disclosure) would have to fully evaluate all carriers that transport hazardous waste. The Alliance was concerned that there would be a backlog of applications going to these few states that required all three sections. Motor **carriers** would potentially see a longer time period before obtaining their authorization to transport.

A motor carrier may petition the governing board for designation of a base state other than that provided for in the hierarchy outlined above. If a motor carrier petitions the **governing** board, the state that would be the base state under option one (principal place of business) or two (plurality of miles) must be consulted and must agree that any exception approved by the governing board furthers administration of the base state agreement and does not allow the petitioning carrier to evade any pending action by a state that would have been the base state without the exception.

Single Trip Permits. Both the Permitting and Enforcement Subgroups recommended that a carrier should not have the option of circumventing the full permit application process through the issuance of single trip permits. The groups also considered what should be done with a vehicle, subject to regulation under the Uniform Program, that enters a state without appropriate credentials.

The Enforcement and Audit Subgroup recommended that this situation should be governed by individual state law. Alternative state approaches to enforcement of non-permitted carriers include, but are not limited to:

- imposing **fin**es for transporting hazardous materials without a permit;
- pulling the vehicle out of service until the carrier obtains the proper credentials;
- escorting the vehicle to a “safe haven” until the proper credentials are obtained;
- requiring a CVSA inspection of the vehicle, driver, and contents to ensure that the vehicle can be operated safely before the vehicle is allowed to proceed;
- ignoring the problem’ ; or
- any combination of the above.

. For example, New Jersey’s hazardous waste transportation program applies only to carriers that pick up or dispose of waste within the state. Therefore, a non-permitted carrier that is only “passing through” New Jersey would not be subject to any penalty under state law.

When a state identifies a non-permitted carrier, it should notify the state in which that carrier should have applied for registration and permitting. The potential base state should then contact the carrier and request that the carrier go through the entire application process. Failure by the carrier to follow up with a full application should be reported to the national repository for entry into the "bad actors" database.

The Enforcement and Audit Subgroup's recommendations were adopted by the full Alliance at its fourth meeting in San Antonio, Texas, on March 22-23, 1993.

Permitting of Shippers. A shipper is defined as any entity that offers hazardous materials for transportation. Any "person" who consigns hazardous materials to a carrier for transport is acting as a shipper. Staff research for the Alliance found fifteen state programs that require registration or permitting of shippers. Of these programs, one applied to all hazardous materials, six applied to hazardous waste, and eight applied to radioactive materials. Eight of these are called "permits" by the states that run the programs, but only four meet the Alliance definition of a permit that is, "the requirements and procedures by which a motor carrier or shipper obtains the right to transport hazardous materials based on safety requirements. Permitting differs from registration in that the state subjects the company to certain tests and/or thresholds to determine fitness and capacity to transport hazardous materials."

Four states require hazardous waste shipper permits: Kentucky, New Jersey, Rhode Island, and Vermont. At its May 14-15, 1992, meeting the Permitting Subgroup determined that these permits are issued pursuant to the states' authority under the Resource Conservation and Recovery Act. Such a program, targeted at generators or facilities under RCRA, would not be subject to preemption under HMTUSA. Thus, the subgroup decided that no recommendations regarding shipper permitting would be developed. Outside of these four permit programs that include shippers, no shipper hazardous material transportation permitting is exercised at the state level.

Confidentiality. Industry advisors to the Alliance requested that certain information requested for the permit and disclosure be confidential. At the first meeting of the Alliance, the participants determined that, as a general rule, all information that concerned commercial relationships, routes, and specific products should be confidential. These provisions could provide competitors with information about specific customers and the amount of business that a motor carrier does with that customer, allowing a competitor to undercut prices and take over a portion of the business.

At a meeting in Dallas on January 21-22, 1993, the Permitting Subgroup asked participating states to assess their own confidentiality statutes for use as a model for the Alliance. New Jersey and California representatives felt that they had statutes that the Alliance could use as models. California's statute protects financial information that California collects on waste carriers. Another suggested model was the Freedom of Information Act.

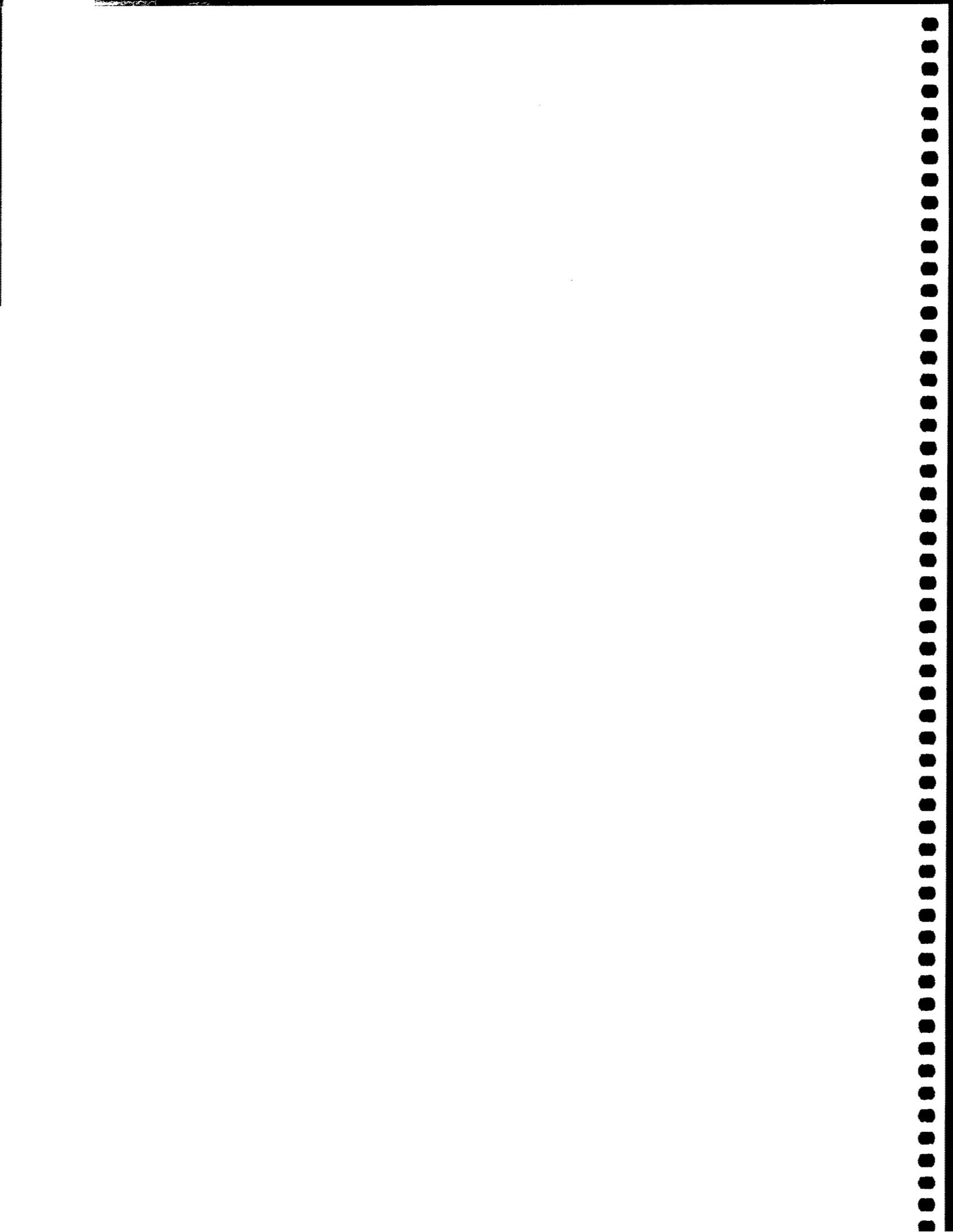
In the final meetings of the Alliance and subgroups, the industry advisors were asked to assess the program and outline those elements they believed should be kept confidential. In addition to the general rule about routes, customers, and specific materials, industry advisors also stated that any information on corporate structure and business or personal matters should be held confidential. The disclosure form requires information about the financial holdings and stability of the corporation. Industry advisors asserted that this information could be used by competitors to jeopardize business opportunities for the carrier. The Alliance determined that financial information will be covered under the confidentiality provisions of the Uniform Program.

At the **final** meeting of the Alliance, held in St. Louis, Missouri, on May 23-25, 1993, the Alliance accepted a proposal by industry advisor Jan **Balkin** to reference the Interstate Commerce Commission (ICC) regulations on confidentiality if they are consistent with current Alliance policy. ICC regulations state that any officer or employee of a carrier may not disclose information about the nature of the destination of a load or the route taken. This provision protects the business concerns of the carrier.

The Alliance also asked that legal counsel look at the Freedom of Information Act and analyze the model program to recommend any additional items that should be held in confidence by the base state.

Program officers on the Alliance expressed **concern** over the structure of the application and keeping items confidential while still providing other information to the public. The Alliance members voted to segregate all confidential information on the application in order to further ensure the confidentiality of the information.

Without objection from industry, the Alliance adopted the position that confidential information could be shared among participating states for purposes of reviewing a carrier's application or investigating possible violations by the carrier. This information will be flagged in the repository database system in order to ensure limited access to the information.



Section 4 PROPOSED UNIFORM PROGRAM

This section contains the Uniform State Program for state regulation developed by the Alliance for Uniform **HazMat** Transportation Procedures (the Alliance). The Alliance adopted the general provisions by a vote of twenty-two to one with one abstention on May **25, 1993**, at its final meeting in St. Louis, Missouri. The Alliance staff then submitted to the members a draft program with specific language based on the policies adopted at the St. Louis meeting. Following their review, a final revised program was presented to the members on September **10, 1993**.

I. Assumptions

- A. The overriding policy objective of a uniform state program for regulating hazardous materials transportation is the protection of public health and safety. A uniform program is designed to promote safety through increased compliance with a single set of registration and permitting requirements versus the existing myriad of state programs.
- B. The primary purposes of a state registration program are to:
 - 1. identify persons who transport, ship, or cause to be shipped hazardous materials by motor carriers, and
 - 2. generate revenues for state programs that promote the safe transportation of hazardous materials.
- C. The primary purpose of a state permitting program is to identify "qualified" **motor** carriers of hazardous materials and to assure states participating in the reciprocal agreement that the base state has demonstrated due diligence in reviewing the operations of the motor carrier in accordance with the policies and procedures associated with the uniform state program.
- D. The Uniform Program will apply only to those states that elect to regulate the transportation of hazardous materials beyond any state role authorized under the federal registration, safety permitting, and routing requirements under **HMTUSA**.
- E. The subject matter of Section 22 should **be** narrowly construed, and is strictly limited to the uniform registration and permitting forms and procedures for persons who transport, cause to be transported, or ship hazardous material by motor vehicle.
- F. Section 22 in no way restricts or affects the rights of states, political subdivisions, or Indian tribes to enact or enforce their laws **governing** the conduct of motor carriers transporting hazardous materials within their jurisdictions under the uniform national registration or permit. Jurisdictions, subject to the Uniform Program, shall not be prohibited from enjoining or otherwise restraining the operation of hazardous materials motor carriers in their state, based on violations of federal laws or regulations, failure to comply with the terms and conditions of a uniform permit or registration, or for violations of applicable state or local laws and regulations.

- G. Within the Uniform Program there will be some flexibility for state administration. The primary area of flexibility is the level of regulation within a given state. For example, a state may choose only to register hazardous materials transporters.
- H. Both interstate and intrastate motor carriers shall be subject to the requirements and procedures adopted under the base state agreement.
- I. Both state registration and permitting will be conducted under a base state approach. There will be full reciprocity among participating states to accept registration and permits and to take actions against a carrier that might result in suspension or revocation of the motor carrier's right to transport hazardous materials.
- J. The Alliance's support of reciprocity is contingent on the rights of states to maintain their individual enforcement authority. This provision is not severable, and should the USDOT reject the Alliance's position that state enforcement authority should be fully preserved, the Alliance's support of reciprocity is withdrawn in its entirety. Furthermore, USDOT's regulations should include language that, if a court of competent jurisdiction determines that states may not, for cause, enjoin or otherwise restrain the operation of an hazardous materials motor carrier in their state, the provision for reciprocity among the states shall be deemed non-severable and null and void. Should that occur, non-base states shall not be required to honor permits issued by base states. (For purposes of the Uniform Program, "for cause" is defined as "not arbitrary and capricious.")
- K. State programs will be subject to some form of program audit or accreditation in order to ensure accurate revenue collection and distribution and guarantee the integrity of the reciprocity agreement.
- L. While the uniform program might draw from other base state agreements, the broad nature of hazardous materials transportation regulation (identification, fee collection, permitting, safety inspection) will require establishment of a separate, comprehensive base state agreement.
- M. Centralized functions of the base state agreement will be administered by a national repository.
- N. To the extent possible, the state uniform program will compleme the federal registration and permitting program.
- O. The Alliance cannot mandate the administrative structure for hazardous materials regulation within an individual state. The Alliance, however, supports the concept of one-stop shopping for all motor carrier registration and permitting and in-state coordination of all agencies involved in the regulation of any hazardous materials.
- P. Localities have a role in the safe transport of hazardous materials, particularly related to emergency planning and response. The uniform state program should consider and make provision for the ability of localities to carry out these responsibilities. Specific policies and procedures governing the relationship between localities and their respective states are internal state issues subject to parameters set forth in the Uniform Program.

- Q. Revenues generated through registration fees shall be used by the state for purposes that enhance the safe transportation of hazardous materials as mandated in **HMTUSA**.
- R. Revenues generated through permitting fees shall be used only to cover the costs associated with administering the permit process. States may develop a fee structure associated with the level of effort required to review individual applications as long as the state provides an estimate of charges above the normal permitting fee to the applicant and establishes an appeals process.
- S. The uniform program regulations promulgated under Section 22 shall not impede a state's ability to regulate the generation, fixed storage, treatment, or disposal of any hazardous material, waste, or substance authorized under other federal or state laws or regulations.
- T. Data required by states as part of the uniform state registration or permitting process shall **be** limited to data elements that are specifically needed to meet the requirements of the uniform state program.
- U. No provisions of the uniform state program shall exceed the most stringent requirements contained within any of the currently operating state hazardous materials, hazardous waste, or radioactive materials transportation programs.

II. Participation in a Base State Agreement

- A. All states (**and** localities, where applicable) that elect to register **and/or permit** motor carriers and/or shippers to transport hazardous materials shall belong to a base state agreement under which a registration or permit in one jurisdiction is accepted by all jurisdictions.
- B. The agreement shall be authorized and generally defined in the federal regulations promulgated by the Secretary of Transportation under Section 22 of HMTUSA. Procedures and policies associated with the agreement shall be adopted by the signatories to the agreement ("signatories"). Interpretation of the agreement shall be made by a governing board that is representative of the signatories. Interpretations of the agreement still must meet the uniformity criteria within HMTUSA and may still be subject to a preemption determination by the Secretary.
- C. Administrative functions associated with the implementation of the Uniform Program shall reside in a national repository established by, and under the direction of, the governing board.

III. Carriers and Shippers Covered under the Uniform Program

- A. The uniform state program pertains to all persons who offer for highway transportation or transport:
 - 1. hazardous materials of a type and amount that requires the transport vehicle to be placarded pursuant to 49 CFR 172, or

2. "hazardous substances" and/or "marine pollutants" when transported in bulk packaging as defined in 49 CFR 171.8, or
 3. hazardous waste of a type and amount that requires the shipment to be accompanied by a Uniform Hazardous Waste Manifest contained in 40 CFR 262, including "state designated hazardous wastes."
- B. "State designated hazardous waste" means additional hazardous wastes that have been officially determined by states that have been authorized by EPA to manage the RCRA program within their respective states To differentiate these wastes from those included in the USDOT hazardous materials table, they will be referred to as "state-designated wastes." Inclusion of these wastes are subject to the following conditions.
1. The state registers these "state-designated wastes" with the national repository.
 2. Registration and permitting requirements placed on carriers and shippers to transport these "state-designated wastes" are the same as those imposed for all general categories of hazardous materials.

IV. Registration of Shippers

- A. States that elect to register shippers shall do so in the same manner as prescribed under the federal registration program. The decision to include shippers in the state registration program shall be determined by the individual states. The Alliance recommends that a state's decision take into account the equitable distribution of financial burden among all carriers and offerers of hazardous material.
- B. State registration of shippers shall apply only to offerers that maintain facilities in that state, including distribution facilities, terminals, and warehouses.
- C. Revenues generated from shipper registration fees shall not be allocated among the states.
- D. The state shall establish an equitable and reasonable fee structure for shippers.
- E. At the time a shipper registers under the federal registration program, the shipper shall submit a copy of its federal registration form with the appropriate fee to the state agency designated to administer the program.

V. Registration of Motor Carriers

- A. States that elect to register motor carriers shall do so through a national base state system. States that choose not to participate in the program may designate one other public entity in the state to operate a registration program as long as such program is the same as that for states in the national base state system.
- B. The base state shall:
 1. Process the registration form for each carrier for which it is the base state.

2. Collect registration fees for all states that have a state registration program and in which the motor carrier transports hazardous materials.
 3. Distribute fees to the appropriate states.
 4. Conduct the necessary audits to ensure that the motor carrier is accurately reporting its hazardous materials transportation activity.
 5. Transmit information on carriers registered in that state to the national repository.
- C. The state shall establish an equitable and reasonable fee structure for carriers.
- D. The Alliance strongly encourages states to adopt a fee structure based on a company's apportioned hazardous material transportation activity within each state. The apportioned fee could be a per company or per vehicle fee. The level of hazardous material transportation activity within a state shall be based on two factors: the percent of activity in the state and the percentage of the motor carrier's total activity that involves the transport of hazardous materials.
- E. The percentage of activity in each state shall be the same as the percentage of activity calculated for purposes of the International Registration Plan. Motor carriers that do not register their vehicles through the IRP shall calculate mileage within states for purposes of the Uniform Program in the same manner as that required for the IRP.
- F. The percentage of hazardous materials activity for less-than-truckload shipments shall be the weight of all hazardous materials shipments divided by the total weight of all shipments in the previous year. For truckload shipments, the percentage of hazardous materials activity shall be the number of placarded or marked shipments divided by the total number of shipments in the previous year. A carrier that transports both less-than-truckload and truckload shipments of hazardous materials shall calculate the percentage of hazardous materials activity on a proportional basis.
- G. The registration shall cover a one-year period and shall be based on the motor carrier's actual activity for the previous year.
- H. The registration application shall request the following information for purposes of identifying carriers and calculating fees on an apportioned basis.
1. Company name
 2. **USDOT** motor carrier census number and ICC motor carrier number
 3. EPA transporter identification number (where applicable)
 4. Address for purposes of correspondence
 5. Company contact and title
 6. Contact phone number
 7. Phone number in case of an emergency
 8. Basestate
 9. States in which the motor carrier transports hazardous materials
 10. IRP allocation percentages
 11. Percentage of total activity that involves hazardous materials

- 12. Classes of hazardous materials transported
 - 13. Amount of registration fee(s) enclosed
 - 14. Certification of accuracy
 - 15. Signature of authorized company official
 - 16. Date of application
- I. The emergency contact and phone number does not have to be load specific. It should be the number of a person in the company to contact in case of an emergency involving a power unit of the applicant company.
 - J. A motor carrier shall register in the state that is its principal place of business. If such state *is* not a signatory to the agreement, the motor carrier shall register in the state in which it conducts a plurality of its operations. If a carrier feels that a state other than its principal place of business or the state in which it conducts a plurality of its activity is more appropriate as the base state, the motor carrier may petition the governing board for designation of another state as the base state.
 - K. Government agencies (federal, state, and local) shall be subject to the registration requirements under the uniform state program.
 - L. An intrastate carrier in states that elect to register carriers shall show their allocation as 100 percent in the state in which it operates.
 - M. All data gathered for purposes of registration shall be public information.
 - N. The base state shall provide a "notice of registration" to the motor carrier that includes a company registration number. The company registration number shall be included among the shipping papers for all hazardous materials loads covered under the Uniform Program.

VI. Permitting of Shippers

- A, The Alliance envisions no additional requirements *for* permitting shippers of hazardous materials other than those provided for under other federal and state laws and regulations.

VII. Permitting of Motor Carriers

- A. Permit programs may be operated at any level of government as long as such programs are uniform and reciprocal. All entities issuing permits must use the uniform application form and procedures and must accept a national permit issued by any other entity that has an accredited program consistent with the uniform state program.
- B. A state that both registers and permits shall use a single form for both processes. The registration information shall appear as Part I of the permit application.
- C. A motor carrier shall apply to its base state for a permit. The base state shall be the principal place of business or the state that administers the permit program in which the motor carrier conducts a plurality of its hazardous materials transportation activity. If a carrier feels that a state other than its state of domicile or state in which it conducts a

plurality of its activity is more appropriate as the base state, the motor carrier may petition the governing board for designation of another state as the base state.

- D. A state may require further background disclosure for transporters of hazardous waste. The information requirements associated with the background disclosure shall be contained in Part III of the uniform application.
- E. If a carrier transports hazardous waste and operates in any state that requires a Part III disclosure ("Part III State"), the motor carrier shall apply to its permitting base state in accordance with subsection VII(C), above. If the base state does not require the Part III disclosure, the base state shall contract with the state that does require the Part III disclosure in which the motor carrier records a plurality of its miles among all Part III states in which the motor carrier operates.
- F. The national permit confers on a motor carrier the authority to transport hazardous materials in all states that participate in the Uniform Program.
- G. The base state shall:
 - 1. Process the permitting application for each carrier for which it serves as the base state.
 - 2. Collect the permit fee associated with the cost to the state of issuing the permit.
 - 3. Conduct any pre-permit investigation or audit.
 - 4. Issue indicia to the company that must be carried inside each vehicle transporting hazardous materials.
 - 5. Determine whether violations of the permitting requirements should result in suspension or revocation of the national permit.
 - 6. Perform periodic reviews of the motor carrier's operations.
- H. The permit shall be valid for a period of three years unless there is a substantial change in the motor carrier's operations during the permitting period. At the beginning of the second and third year of the permit period, the motor carrier, as part of the **annual** registration process, shall certify that there are no substantial differences in its operations and reaffirm its certification to comply with applicable transportation and environmental laws and regulations.
- I. The company, in its permit application, must certify that each vehicle and driver complies with the vehicle-specific and driver-specific requirements.
- J. The base state, based on responses to "trigger" questions contained in the application, may conduct additional investigations into a motor carrier's operation prior to issuing a permit to determine that the motor carrier has, in fact, complied with the certifications in the application. [Note: The Alliance is working on a set of considerations to be used by states when conducting the permit review.]

- K. Failure to comply with the certifications is grounds for denying, suspending, or revoking a permit.
- L. Permit requirements for all carriers of hazardous materials will appear in Part II of the uniform permit. Additional information and requirements for carriers of hazardous waste will appear in Part III of the uniform permit.
- M. Government agencies shall be subject to permitting requirements under the uniform state program.
- N. Proprietary information related to commercial relationships, routes, and specific products and financial information gathered on individual motor carriers as part of the permitting process shall be confidential and may only be used by the base state, other states in which the motor carrier operates, and the national repository for purposes of enforcing compliance with permitting requirements.

VIII. Selection of Base State

- A. In addition to the hierarchy outlined above, the third option—petitioning the governing board for designation of a base state other than that provided for under option one (principal place of business) or option two (plurality of mileage)—requires that the state that would be the base state under option one or option two must be consulted with and must agree that any exception approved by the governing board furthers administration of the base state agreement and does not allow the petitioning carrier to evade any pending action by a state that would have been the base state without the exception.
- B. The definition of principal place of business shall be "the participating state in which the applicant has an established place of business, where mileage is accrued by the fleet, and where operational records of such fleet are maintained."
- C. In cases where the Federal Highway Administration has authorized more than one alternate location for locating records, the base state shall be the state in which the applicant shows a plurality of miles.

IX. Single-Trip Permits

- A. A motor carrier shall not have the option of circumventing the full national permit application process through issuance by any state of a single trip permit that implies any authority to transport hazardous materials outside the state issuing the permit. Any state issuing a single-trip permit shall inform the repository of such action for purposes of informing the potential base state of the existence of a non-permitted carrier domiciled in that state.
- B. The manner in which a state deals with a motor vehicle owned or operated by a non-permitted hazardous materials carrier shall be governed by the laws and regulations of that state,

X. Owner/Operator Vehicles

- A. A permitted motor carrier that transports hazardous materials under its permit using owner/operator vehicles is responsible for the operations of such vehicles and drivers, including all assurances and certifications contained in the uniform permit, as if such vehicles were owned and operated by the permitted carrier and the driver was employed by the motor carrier, including providing information on the owner/operator that would be required in the Part III business disclosure for hazardous waste transporters. Violations of hazardous materials transportation requirements that result from the operations of an owner/operator vehicle while operating under a motor carrier's permit authority shall **be** viewed as violations by the permitted motor carrier and shall be reported to the base state at the time of future application or renewal of the national permit.
- B. This provision does not apply to instances when one motor carrier contracts with a second motor carrier. In this case, the subcontractor must have its own national hazardous materials transportation registration and/or permit issued under the Uniform Program. For purpose of the Uniform Program, a subcontractor is **defined** as "a person or entity with whom a transporter of hazardous materials contracts to perform a service related to the transport of hazardous materials."

XI. Local Regulatory Functions

- A. In addition to local registration and permitting options outlined in other sections of this document, localities may regulate routing in compliance with the procedures contained in HMTUSA and subsequent federal regulations issued by the U.S. Department of Transportation.

XII. Enforcement

- A. Enforcement of the Uniform Program shall be conducted through, but not limited to, the following activities.
1. **Inspections.** The physical examination and certification of specific vehicles, tanks, containers, cargo, and/or drivers.
 2. **On-Site Reviews.** On-site examination of a carrier's or shipper's operations including physical inspections and review of the company's operating systems.
 3. **On-Site Audits.** Examination of a company's records to verify information on which a permit is based and to determine compliance with the state Uniform Program requirements.
 4. **Desk Audits.** An in-house review of a company's records sent **by the** company to the regulatory agency, generally triggered by a suspected compliance violation.
 5. **Reports.** Periodic reports that describe the motor carrier's activities.
 6. **Roadside Inspections.** Inspection of vehicles and drivers while en route, primarily at weigh stations and ports of entry.

7. *Spot Checks.* Inspection of vehicles and drivers by law enforcement officers based on probable cause or statutory authority.
 8. *Consumer Complaints.* Investigations of alleged violations triggered by a public inquiry.
 9. *Cross-matching of Data.* Comparison of available data from two or more independent sources (e.g, Motor Carrier Safety Assistance Program inspections and hazardous material motor carrier registrations).
 10. *Investigative Authority.* Use of subpoenas, depositions, and other interrogatory powers.
- B. The enforcement powers listed above are available to both the base state for purposes of issuing, denying, suspending, or revoking the national permit and to any other state in which a motor carrier operates for purposes of investigating the carrier's operations associated with the transportation of hazardous materials within that state. States that have identified "state-designated hazardous wastes" as provided for under subsection III(B) may use the enforcement authorities, outlined above, to ensure safe transportation of such wastes
- C. Penalties for violation of hazardous material transportation requirements, including restricting the operations of a motor carrier within a non-base state, shall be those of the state in which the violation occurs and is identified by state authorities. Any revenues generated from penalties shall not be allocated among the states.
- D. If a motor carrier is restricted from operating in a non-base state at the time the Uniform Program becomes effective, the restrictions in that state shall remain in effect until the motor carrier satisfies the conditions on which the restriction was based.
- E. Officials of the state in which the violation occurs shall notify the base state and the national repository of the violation.
- F. The base state shall conduct a review to determine whether the violation triggers potential suspension or revocation of a registration or permit. The repository governing board shall oversee the suspension and revocation process to ensure fairness and resolve disputes.
- G. For cause, the base state may suspend the national permit and determine the conditions under which the suspension is lifted. If a national permit is revoked, before again transporting hazardous materials, the motor carrier must reapply for a new national permit under the full application process provided for under the uniform state program.
- H. The base state shall notify the national repository of any pending actions against a shipper or carrier that may result in suspension or revocation of a permit. The base state shall notify the national repository of the final disposition of each case.
- I. Violation of any requirement imposed by an individual state (e.g., "state-designated hazardous wastes") that is not also a violation of a requirement associated with the

national permit shall not be grounds for suspension or revocation of a carrier's national registration or permit.

- J. Any base state that suspends or revokes a registration or permit shall provide the suspended carrier with a letter that details the reasons for the state's action and outlines steps the motor carrier must take to be reinstated. The base state shall provide the national repository with a copy of the letter of suspension or revocation.
- K. To the extent possible, enforcement of the uniform state hazardous materials transportation requirements shall be conducted using existing enforcement standards and procedures under state law and existing federal regulations.

XIII. Dispute Resolution

- A. The by-laws adopted by the participating states shall include a process by which signatories to the agreement may adopt policies and procedures for implementation of the Uniform Program and that are necessary and proper to the administration of the Uniform Program. The policies and procedures shall include specific procedures for dispute resolutions.
- B. The dispute resolution procedures shall include procedures by which a non-base state can challenge the issuance of a permit by the base state.
- C. Such procedures shall ensure an opportunity for public notice and participation in the development of such policies and procedures.
- D. Nothing in such procedures prohibits a state or political subdivision, Indian tribe, or other person affected by such policies and procedures from seeking redress in any administrative process or court of competent jurisdiction.

XIV. National Repository

- A. A national repository shall be established to administer the base state agreement.
- B. The repository shall report to a governing board that is representative of the signatories to the agreement.
- C. The repository shall have the following functions.
 - 1. It shall maintain a central database to include information on registered and permitted shippers and carriers. If feasible, the repository should use other existing databases for this purpose.
 - 2. With the exception of proprietary information related to commercial relationships, routing, specific products, and financial information, information in the database shall **be** made available to the public. The repository may charge a reasonable fee to cover the cost of providing public access to the database.

3. It shall provide on-line access to the database for members of the agreement for purposes of enforcing the agreement and requirements under the uniform state program.
 4. It shall maintain an accurate and current listing of all states that require registration and permits for transportation of state-designated hazardous wastes under their RCRA authority that are not listed in the hazardous materials table. The list shall include the definition (i.e., characteristics and quantities) of such wastes as set forth in state law or regulation.
 5. It shall manage the dispute resolution process by which members of the agreement can resolve differences including interpretation of the agreement. Dispute resolution may also include mediation between a carrier or shipper and its base state.
 6. It shall conduct an accreditation process for state and local programs to ensure the integrity of the base state system.
 7. It shall design, coordinate, and conduct training for members of the agreement, states interested in joining the agreement, localities, industry, and other interested parties.
 8. It shall provide netting of apportioned registration fees among the member states.
 9. It shall serve as a national clearinghouse for industry and other interested parties on state participation and information related to exceptions (e.g., additional covered substances that states determine to be hazardous wastes under their RCRA authority).
 10. Under contract to the U.S. Department of Transportation, it may serve as a clearinghouse for routing designations and restrictions.
 11. It shall perform other appropriate tasks as authorized by the governing board to support administration of the agreement.
- D. The repository shall be funded through assessments of member states, and where applicable, localities. The assessment shall be based on the number of shippers and carriers registered or permitted by the state. Member states may include a surcharge on their registration fees that is earmarked for maintenance of a national repository.

XV. PUBLIC PARTICIPATION AND COMMENT

- A. Public participation in the base state permitting system is critical. Interested citizens must have a mechanism for providing information into the system about specific carriers who may constitute a threat to public health and safety.
- B. The repository will establish a comment and complaint tracking and retrieval function to promote public participation. Citizens could register complaints about a specific carrier's actions directly to the repository or through the permitting authority in their home state. Citizen comments would be maintained in a central database and indexed by carrier. When a state reviews an application, it will be required to query the database for all complaints registered against the applicant. Individuals who have complained about the

applicant's operations would then be notified by the base state of the pending application and given the opportunity to provide additional information during the review process. Individuals who wish notification with respect to a specific carrier or a carrier operating in the requester's state without making a complaint also would be notified through this process. Action taken on a permit application would be communicated to individuals who had registered complaints about the motor carriers. Parties outside the base state will have the same standing as parties within the base state with regard to permit proceedings in the base state. Interveners should exhaust administrative remedies prior to engaging in litigation. The burden of proof shall be on the intervener.

- C. The public shall have access to information in accordance with the Freedom of Information Act and proceedings of the governing board. Information on complaints shall be available to the public (including the company against whom a complaint is lodged) relative to the evidence and nature of the complaint. Rules for appropriate protection of anonymity shall be developed.

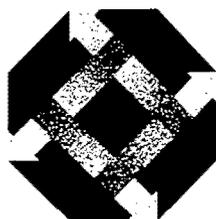


Section 5
PROPOSED UNIFORM APPLICATION AND INSTRUCTIONS

Section 5 contains copies of the proposed application for motor carrier registration, permitting, and disclosure for hazardous waster transporters under the Uniform Program. A copy of the instructions to motor carriers for completing the application is also included. While the application and instructions are provided in hard copy, the Alliance has authorized the states participating in the pilot program to explore the potential for electronic date interchange.

ALLIANCE FOR UNIFORM HAZMAT TRANSPORTATION PROCEDURES

Application and Instructions Packet
for
The Uniform State Hazardous Materials Transportation Motor Carrier Registration and Permit Program



**ALLIANCE
FOR UNIFORM
HAZMAT
TRANSPORTATION
PROCEDURES**

The uniform registration and permitting application shall be completed by all motor carriers of hazardous materials of a type and amount that requires the vehicle (truck or trailer) to be placarded or hazardous substances and/or marine pollutants transported in bulk packagings, or hazardous wastes subject to the manifest requirements of 40 CFR 262.20 et. seq., or applicable state law relating to the Uniform Hazardous Waste Manifest, which operate in states who participate in the uniform registration and permit program. Additional explanation of the program may be found in a document entitled *The Uniform Program*. The uniform program applies to the following categories of hazardous materials.

Hazardous substances or materials determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce. Specific materials and substances are listed in the Hazardous Materials Table contained in 49 CFR 172.101 and its appendices.

Substances listed by the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) Section 101(14) and that meets the limits of reportable quantities.

Wastes subject to EPA's Resource Conservation and Recovery Act (RCRA) regulations contained in 40 CFR 262 and state-designated RCRA wastes as included in the national repository, hazardous substances, and marine pollutants as defined in 49 CFR 171.8.

Radioactive materials, defined by the U.S. Department of Transportation and the Nuclear Regulatory Commission, as a material that spontaneously emits ionizing radiation having a specific activity greater than 0.002 micro curies per gram and one in which the radioactivity is uniformly distributed.

UNIFORM MOTOR CARRIER REGISTRATION AND PERMIT APPLICATION FORM

FOR STATE HAZARDOUS MATERIALS TRANSPORTATION PROGRAMS

PART I. REGISTRATION APPLICATION (SEE ATTACHED INSTRUCTIONS FOR COMPLETING FORM)

1. APPLICANT NAME _____

2. MAILING ADDRESS
STREET ADDRESS (if different from mailing address) _____

| | |
|---|--|
| <p>3a. U.S. DOT MOTOR CARRIER CENSUS NUMBER _____</p> <p>3b. INTERSTATE COMMERCE COMMISSION NUMBER _____</p> <p>3c. WHICH NUMBER IS DISPLAYED ON APPLICANTS VEHICLES? _____</p> | <p>4a. U.S. DOT RSPA REGISTRATION NUMBER, IF APPLICABLE _____</p> <p>4b. FEDERAL EPATRANSPORTER IDENTIFICATION NUMBER(S), IF APPLICABLE _____</p> <p>4c. DO YOU TRANSPORT HAZARDOUS WASTE IN A MANNER THAT REQUIRES A UNIFORM MANIFEST? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> |
|---|--|

5. APPLICANT CONTACT, TITLE, AND PHONE NUMBER _____

6. WHO TO CONTACT IN CASE OF ACCIDENT OR EMERGENCY (NAME AND PHONE NUMBER) _____

7. HAZARDOUS MATERIALS BASE STATE/STATE OF FILING (see instructions for details on determining base state) _____

8. PLEASE CHECK ALL STATES IN WHICH THE APPLICANT TRANSPORTS HAZARDOUS MATERIALS AND GIVE INTERNATIONAL REGISTRATION PLAN (IRP) APPORTIONMENT PERCENTAGES FOR LAST IRP FISCAL YEAR

| | | | | |
|-------------------------------------|--------------------------------------|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> HI % _____ | <input type="checkbox"/> HI % _____ | <input type="checkbox"/> MA % _____ | <input type="checkbox"/> NM % _____ | <input type="checkbox"/> I S D % _____ |
| <input type="checkbox"/> AK % _____ | <input type="checkbox"/> ID % _____ | <input type="checkbox"/> MI % _____ | <input type="checkbox"/> NY % _____ | <input type="checkbox"/> * _____ % |
| <input type="checkbox"/> IL % _____ | <input type="checkbox"/> I L % _____ | <input type="checkbox"/> MN % _____ | <input type="checkbox"/> NC % _____ | OUT % _____ |
| <input type="checkbox"/> AR % _____ | <input type="checkbox"/> IN % _____ | <input type="checkbox"/> MS % _____ | <input type="checkbox"/> ND % _____ | <input type="checkbox"/> VT % _____ |
| <input type="checkbox"/> CA % _____ | <input type="checkbox"/> I A % _____ | <input type="checkbox"/> MO % _____ | <input type="checkbox"/> OH % _____ | <input type="checkbox"/> VA % _____ |
| <input type="checkbox"/> CO % _____ | <input type="checkbox"/> KS % _____ | <input type="checkbox"/> MT % _____ | <input type="checkbox"/> OK % _____ | <input type="checkbox"/> WA % _____ |
| <input type="checkbox"/> CT % _____ | <input type="checkbox"/> NH % _____ | <input type="checkbox"/> NE % _____ | <input type="checkbox"/> OR % _____ | <input type="checkbox"/> WV % _____ |
| <input type="checkbox"/> DE % _____ | <input type="checkbox"/> NJ % _____ | <input type="checkbox"/> NV % _____ | <input type="checkbox"/> PA % _____ | <input type="checkbox"/> WI % _____ |
| <input type="checkbox"/> FL % _____ | <input type="checkbox"/> ME % _____ | <input type="checkbox"/> NH % _____ | <input type="checkbox"/> RI % _____ | <input type="checkbox"/> WY % _____ |
| <input type="checkbox"/> GA % _____ | <input type="checkbox"/> MD % _____ | <input type="checkbox"/> NJ % _____ | <input type="checkbox"/> SD % _____ | <input type="checkbox"/> D C % _____ |

9. PERCENTAGE OF TOTAL TRANSPORTATION ACTIVITY THAT INVOLVES HAZARDOUS MATERIALS FOR LAST CALENDAR YEAR (See instructions for options for calculating) _____

10a. CHECK ALL CLASSES AND DIVISIONS OF HAZARDOUS MATERIALS TRANSPORTED

| | | | |
|---|--|---|---|
| <input type="checkbox"/> Explosive 1.1 | <input type="checkbox"/> Extremely insensitive detonating substances 1.6 | <input type="checkbox"/> Spontaneously combustible material 4.2 | <input type="checkbox"/> Radioactive material 7 |
| <input type="checkbox"/> Explosive 1.2 | <input type="checkbox"/> Flammable gas 2.1 | <input type="checkbox"/> Dangerous when wet material 4.3 | <input type="checkbox"/> Corrosive material 8 |
| <input type="checkbox"/> Explosive 1.3 | <input type="checkbox"/> Non-flammable compressed gas 2.2 | <input type="checkbox"/> Oxidizer 5.1 | <input type="checkbox"/> Miscellaneous hazardous material 9 |
| <input type="checkbox"/> Explosive 1.4 | <input type="checkbox"/> Poisonous gas 2.3 | <input type="checkbox"/> Organic peroxide 5.2 | <input type="checkbox"/> Other regulated material: ORM-D |
| <input type="checkbox"/> Very insensitive explosives/ blasting agents 1.5 | <input type="checkbox"/> Flammable and combustible liquid 3 | <input type="checkbox"/> Poisonous materials 6.1 | <input type="checkbox"/> State-designated hazardous waste |
| | <input type="checkbox"/> Flammable solid 4.1 | <input type="checkbox"/> Infectious substance (Etiologic agent) 6.2 | |

10b. EXEMPT MATERIALS

11. TOTAL NUMBER OF POWER UNITS OPERATED, OWNED OR LEASED _____

12. INDICATE AMOUNT OF REGISTRATION FEE(S) ENCLOSED \$ _____
(Please see attached fee schedule to assist you in calculating the correct fee for your company.)

13. CERTIFICATION OF INFORMATION. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, AND AFTER DUE INVESTIGATION, THE ABOVE INFORMATION IS TRUE, ACCURATE AND COMPLETE.

NAME (please print) _____ PHONE L - - - J - - - - -

TITLE _____ DATE _____

SIGNATURE _____

FALSE STATEMENTS MAY VIOLATE 18 U.S.C. 1001, MAY INCUR STATE PENALTIES, AND MAY INVALIDATE REGISTRATION FORM.

PART II. PERMIT APPLICATION (SEE ATTACHED INSTRUCTIONS FOR COMPLETING FORM) NOTE: Questions A4, B2, all D and all E are "trigger" questions that may include a request from the base state for additional information from the applicant.

A. CORPORATE STRUCTURE

- | | | |
|---|---|--|
| <p>1. TYPE OF CARRIAGE:</p> <p><input type="checkbox"/> PRIVATE</p> <p><input type="checkbox"/> COMMON</p> <p><input type="checkbox"/> CONTRACT</p> | <p>2. TYPE OF BUSINESS:</p> <p><input type="checkbox"/> CORPORATION</p> <p><input type="checkbox"/> SOLE PROPRIETORSHIP</p> <p><input type="checkbox"/> PARTNERSHIP</p> <p><input type="checkbox"/> JOINT VENTURE</p> <p><input type="checkbox"/> OTHER (Explain)</p> | <p>3. NUMBER OF YEARS IN HAZARDOUS MATERIALS TRANSPORTATION BUSINESS:</p> <p>_____ YEARS</p> |
|---|---|--|

4. HAS THE APPLICANT'S PARENT, ANY SUBSIDIARY, AND/OR ANY CORPORATE OFFICER, DIRECTOR, OR CONTROL PERSON (SECURITIES AND EXCHANGE COMMISSION DEFINITION) OF THE PARENT OR ANY SUBSIDIARY BEEN CONVICTED, ASSESSED, OR OTHERWISE FOUND CULPABLE IN LEGAL PROCEEDINGS RELATED TO HAZARDOUS MATERIALS TRANSPORTATION VIOLATIONS AT THE FEDERAL, STATE, TRIBAL OR LOCAL LEVEL IN THE LAST FIVE YEARS? (IF YES, PLEASE EXPLAIN.)
- ___ YES ___ NO

B. PERMITS HELD

- 1 LIST ALL HAZARDOUS MATERIALS TRANSPORTATION REGISTRATIONS, PERMITS, LICENSES OR SIMILAR TYPE OF CREDENTIAL HELD IN THE LAST FIVE YEARS.

| JURISDICTION | CURRENT OR MOST RECENT PERMIT OR REGISTRATION NUMBER | YEARS HELD | TYPE OF MATERIAL (HM, HW, RAM) |
|----------------------------|--|------------|--------------------------------|
| U.S. DOT RSPA REGISTRATION | | | |
| | | | |
| | | | |
| | | | |
| | | | |

2. HAS THE APPLICANT HAD A HAZARDOUS MATERIALS TRANSPORTATION LICENSE, PERMIT, OR REGISTRATION WITHDRAWN, DENIED, SUSPENDED OR REVOKED BY ANY STATE, LOCAL OR FEDERAL AGENCY IN THE LAST FIVE YEARS? (IF YES, PLEASE EXPLAIN.)
- ___ YES ___ NO

C. U.S. DOT SAFETY RATING

1. U.S. DOT SAFETY RATING:

- SATISFACTORY
- UNSATISFACTORY
- CONDITIONAL
- UNRATED

2. DATE THE U.S. DOT MOTOR SAFETY RATING WAS ISSUED:

IF APPLICANT IS UNRATED, ATTACH EVIDENCE OF REQUEST TO U.S. DOT TO RECEIVE A SAFETY RATING. ANY CHANGE IN THE SAFEN RATING MUST BE REPORTED IMMEDIATELY TO THE BASE STATE.

D. HISTORY OF APPLICANT'S MAJOR VIOLATIONS RELATED TO THE TRANSPORTATION OF HAZARDOUS MATERIALS

1. LIST AND EXPLAIN ALL FINES AND PENALTIES RELATING TO HAZARDOUS MATERIALS TRANSPORTATION OVER \$1,000 FOR STATE AND LOCAL VIOLATIONS AND OVER \$2,500 FOR ALL FEDERAL VIOLATIONS IN THE LAST FIVE YEARS. (ATTACH ADDITIONAL SHEETS IF NECESSARY.)

LIST TOTAL DOLLAR AMOUNT OF FINAL AGENCY ASSESSMENT FOR SUCH FINES AND PENALTIES.

| ISSUING AGENCY | TYPE OF VIOLATION | FINAL AGENCY ASSESSMENT | TYPE OF MATERIAL INVOLVED |
|----------------|-------------------|-------------------------|---------------------------|
|----------------|-------------------|-------------------------|---------------------------|

2. HAS APPLICANT BEEN FINED OR CONVICTED IN THE LAST FIVE YEARS FOR TRANSPORTING HAZARDOUS MATERIALS WITHOUT THE ISSUANCE OF A REQUIRED HAZARDOUS MATERIALS TRANSPORTATION LICENSE, REGISTRATION, PERMIT OR SIMILAR TYPE OF CREDENTIAL? (IF YES, PLEASE EXPLAIN.)

___ YES ___ NO

3. FOR THE PREVIOUS CALENDAR YEAR, HOW MANY HAZARDOUS MATERIALS INCIDENT REPORTS (DOT FORM 5800) DID i-HE APPLICANT FILE WITH THE U.S. DOT?

4. HOW MANY VEHICLE MILES (LOADED AND EMPTY-) DID THE APPLICANT RUN IN THE PREVIOUS CALENDAR YEAR?

5. HOW MANY VEHICLESAND DRIVERS (SEPARATELY TOTALED) HAVE BEEN PLACED OUT-OF-SERVICE DUE TO OUT-OF-SERVICE VIOLATIONS IN THE PASTCALENDAR YEAR?

VEHICLES _____ DRIVERS _____

6. INDICATE NUMBER OF HAZARDOUS MATERIALS OUT-OF-SERVICE VIOLATIONS RECEIVED BY APPLICANT IN THE PAST CALENDAR YEAR.

7. HOW MANY ROADSIDE VEHICLE INSPECTIONS HAS THE APPLICANT RECEIVED IN THE PASTCALENDAR YEAR PURSUANT TO 49 CFR PART 396.9?

E. RESPONSE TO REPORTABLE HAZARDOUS MATERIALS TRANSPORTATION INCIDENTS

1. HAS A STATE OR LOCAL GOVERNMENT MANDATED REMEDIAL ACTION TO THE APPLICANT RELATED TO AN INADEQUATE HAZARDOUS MATERIALS TRANSPORTATION SPILL CLEAN-UP IN THE LAST FIVE YEARS? (IF YES, PLEASE EXPLAIN.)
- Y E S _____ NO

2. HAS THE APPLICANT BEEN ASSESSED MORE THAN \$50,000 BY ANY GOVERNMENTAL ENTITY FOR A CLEAN-UP RELATED TO HAZARDOUS MATERIALS TRANSPORTATION IN THE LAST FIVE YEARS? (IF YES, PLEASE EXPLAIN.) __ YES _____ NO

F. VEHICLE INFORMATION

1. PLEASE CHECK CATEGORY OF VEHICLE AND NUMBER OF EACH. (INDICATE PERCENTAGE OF HAZARDOUS MATERIALS VEHICLES IN FLEET, IF AVAILABLE.)

VAN 1-10
 11-50
 51-100
 101-500
 501-1,000
 OVER 1,000
_____ % USED IN HAZARDOUS MATERIAL TRANSPORTATION

TANK 1-10
 11-50
 51-100
 101-500
 501-1,000
 OVER 1,000
_____ % USED IN HAZARDOUS MATERIAL TRANSPORTATION

FLATBED 1-10
 11-50
 51-100
 101-500
 501-1,000
 OVER 1,000
_____ % USED IN HAZARDOUS MATERIAL TRANSPORTATION

OTHER 1-10
 11-50
 51-100
 101-500
 501-1,000
 OVER 1,000
_____ % USED IN HAZARDOUS MATERIAL TRANSPORTATION
(IDENTIFY)

POWER UNITS 1-10
 11-50
 51-100
 101-500
 501-1,000
 OVER 1,000
_____ % USED IN HAZARDOUS MATERIAL TRANSPORTATION

2. CARGO TANKS. LIST THE NUMBER OF EACH **TYPE** OF TANK OWNED AND OPERATED BY APPLICANT ON DECEMBER 31 OF THE LAST CALENDAR YEAR.

MC/DOT 3061406 _____

NON-SPECIFICATION _____

MD/DOT 3071407 _____

DOT EXEMPTION _____

MC/DOT 3121412 _____

OTHER DOT SPECIFICATION TANKS _____

MC330/33 1 _____

MC 336 _____

G. TERMINALS

1. LIST THE NUMBER OF AND ADDRESS OF ALL TERMINALS OWNED OR OPERATED BY THE APPLICANT. ATTACH ADDITIONAL SHEETS IF NECESSARY.

H. INSPECTIONS

(INSTRUCTIONS: ALL CERTIFICATION BOXES MUST BE INITIALED. SIGN ONCE AT THE BOTTOM OF PAGE 6.)

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, ALL APPLICANT OWNED OR OPERATED TRUCKS HAVE **RECEIVED** A PERIODIC INSPECTION WITHIN THE PAST YEAR UNDER THE REQUIREMENTS DETAILED IN 49 CFR PART 396.17."

I. FINANCIAL RESPONSIBILITY

1. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE COMPANY IS IN POSSESSION OF A PROPERLY EXECUTED DOT FORM MCS 82 OR 90, AS REQUIRED BY 49 CFR PART 387. THIS FORM IS LOCATED AT:

(COMPLETE STREET ADDRESS)

| 2. INSURANCE/SURETY COMPANY | DOLLAR COVERAGE | EXPIRATION DATE | LOCATION WHERE FORMS ARE FILED |
|-----------------------------|-----------------|-----------------|--------------------------------|
| | | | |
| | | | |

J. OTHER CERTIFICATIONS (ALL CERTIFICATION BOXES **MUST** BE INITIALED)

1. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, ALL APPLICANT COMPANY DRIVERS SUBJECT TO 49 CFR PART 383 HAVE A CURRENT COMMERCIAL DRIVER'S LICENSE, INCLUDING ALL APPLICABLE ENDORSEMENTS FOR HAZARDOUS MATERIALS AND CARGO TANKERS."

2. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THIS APPLICANT COMPANY COMPLIES WITH ALL APPLICABLE U.S. DOT BULK PACKAGING REQUIREMENTS AS REQUIRED BY 49 CFR PART 172-180, INCLUSIVE."

3. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE APPLICANT COMPANY IS IN COMPLIANCE WITH 29 CFR 1910.120(Q) REGULATIONS PERTAINING TO AN EMERGENCY RESPONSE PLAN."

4. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE APPLICANT COMPANY IS AWARE OF, AND WILL OBSERVE, ALL STATE DESIGNATED ROUTING REQUIREMENTS AS REQUIRED BY 49 CFR AND SO INSTRUCTS ITS DRIVERS."

5. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE APPLICANT COMPANY IS IN COMPLIANCE WITH 29 CFR 1910.1200 AN5 49 CFR PART 172 SUBPART HAND PART 177.800 DEALING WITH TRAINING REQUIREMENTS FOR HAZARDOUS MATERIALS EMPLOYEES."

6. "I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE, THE COMPANY IS IN FULL COMPLIANCE WITH ALL APPLICABLE U.S. DEPARTMENT OF TRANSPORTATION LAWS AN5 REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS, ALL APPLICABLE ENVIRONMENTAL PROTECTION AGENCY LAWS AND REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS WASTE, ALL APPLICABLE NUCLEAR REGULATORY COMMISSION LAWS AN5 REGULATIONS REGARDING THE TRANSPORTATION OF RADIOACTIVE MATERIALS, ALL APPLICABLE DEPARTMENT OF ENERGY LAWS AN5 REGULATIONS REGARDING THE TRANSPORTATION OF RADIOACTIVE MATERIALS, AND ALL APPLICABLE STATE AND LOCAL LAWS AN5 REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS."

7. "I CERTIFY THAT ALL INFORMATION PROVIDED IN THIS APPLICATION IS, TO THE BEST OF MY KNOWLEDGE, AN5 AFTER DUE INVESTIGATION, COMPLETE, TRUTHFUL AND ACCURATE."

SIGNATURE _____ DATE _____

NAME _____ PHONE (____) _____

TITLE _____

**FALSE STATEMENTS MAY VIOLATE 18 U.S.C. 1001,
MAY INCUR STATE PENALTIES AND MAY INVALIDATE PERMIT FORM.**

K. PERMIT FEE (SEE ATTACHED FEE SCHEDULE) \$ _____
(indicate amount)

Part III
Additional Information Required from Motor Carriers of Hazardous Waste

Introductory Note: Hazardous waste transporter applicants may substitute information from documents filed for other purposes to meet the requirements of Part III. Specific page references to the requested information from such documents must be provided.

A. If the applicant is incorporated, provide the date of incorporation: _____

Place of incorporation: _____

B. Facilities Owned or Operated:

List the name, business address, EPA or State ID Number (as applicable), and principal type of business of all North American facilities which currently are, or have in the last five years been, owned, operated, or leased by the applicant, which during that time have been engaged in any of the activities described below. For each facility, also list all federal, state, and local agencies that have regulated the facility's activities listed in 1-4 below, and list all permits, licenses, and registrations applied for or held during that time by the applicant's firm for such activity. (Do not duplicate those listed in Part II, Section B.)

- **RCRA** or **non-RCRA** hazardous waste transportation, generation, treatment, storage, transfer, disposal, recycling, or other handling. Note: "Non-RCRA hazardous waste" includes a number of materials regulated by certain, but not all, states as hazardous waste, such as waste asbestos, used oil, and contaminated soil.
- **Biohazardous** (infectious or medical) waste transportation, **treatment**, or disposal.
- Septic or industrial wastewater transportation, treatment, or disposal.
- Solid waste transportation, disposal, or other handling.

Provide information in a matrix format with the following headings:

Facility Name
Address
EPA/State ID#
Principal Business
Regulatory Agency
Permits, Licenses, Registrations Held or Applied For

C. Identification of Key Management Personnel.

For purposes of this disclosure statement., "key management personnel" means any individual having positions of discretionary responsibility, control, or **influence** over the applicant's environmental, waste management, or transportation operations. Provide identifying information for such personnel as specified below:

- a. All individuals holding or controlling 10 percent or more of the equity (including stock) in, or debt liability of, the applicant either directly or through another individual, excluding commercial lending institutions.
- b. All directors.
- c. All individuals not listed elsewhere who are owners of facilities or owners of companies from which 25 percent or more of applicant's vehicles are leased and used for the activities described in Part B.
- d. All corporate officers, including but not limited to the firm's president, vice-president, secretary, and chief financial officer.
- e. All managers of environmental regulatory compliance.
- f. All first-line supervisors of transportation operations described in Part B.

2. Fingerprint cards:

- a. Provide fingerprint cards for all current key management personnel named in subpart Cl., above, who have direct management responsibilities and are involved in any hazardous waste transportation operations of the applicant's firm.
- b. The regulating agency may, subsequent to its review of an applicant's disclosure statement, require the applicant to submit fingerprint cards for other current personnel identified in subpart C.1., or for key management personnel of parent, affiliate, or subsidiary companies. The criteria to be used for determining the need for additional fingerprint cards includes information on legal proceedings, as defined in Part E below. The agency's subsequent review of this additional information may impact the applicant's permit status if the agency determines that relevant information was omitted or was inaccurate in the applicant's original submittal.

D. Financial Information

The applicant must provide the following information:

1. Balance sheet and income statement (last three years).
2. Statement of ownership and debt liability for the previous year.

E. Related Business Concerns

1. Parent companies: List all persons which hold, or which have held in the last five years, either directly or through another person, 10 percent or more of the equity in, or debt liability of, the applicant's firm, excluding lending institutions. List all names and addresses used by such persons in the last five years.
2. North American Affiliates and subsidiaries: List all persons in which the applicant's firm, or any person listed in Part C, holds, or has held in the last five years, 10 percent or more of the equity or debt liability. List all names and addresses used by such persons in the last five years.
3. Organizational chart: Provide current organizational chart illustrating the applicant's relationship to all parent, affiliate, and subsidiary companies.
4. Major contractors and persons involved in the brokering of hazardous waste: List all contractors and brokers that account for 10 percent or more of the applicant company's contracted work in the last five years with which the applicant has contracted in any of the activities listed in Part B.

5. Major Clients: List all persons that have accounted for 10 percent **or** more of the work performed by the applicant's **firm** in the last five calendar years.

F. Legal Proceedings

Attach a list and explanation of all legal proceedings, associated with the crimes identified below, against the applicant's business, and key management personnel, as defined in Part C, and against any North American parent, affiliate, or subsidiary company of the applicant. For purposes of this Disclosure Statement, "legal proceedings" means any federal, state, or local enforcement actions, whether administrative, civil, or criminal, pending or adjudicated in the last five years, pertaining to violations of environmental, public health, or transportation laws or regulations. Include the following crimes:

| | |
|---|-----------------------------|
| Murder | Kidnapping |
| Gambling | Robbery |
| Bribery | Extortion |
| Criminal usury | Arson |
| Burglary | Theft and related crimes |
| Forgery and fraudulent practice | Racketeering |
| Perjury or false swearing | Assault constituting felony |
| Felony drug offenses | Anti-trust violations |
| Fraud in the offering, sale, or purchase of securities | |
| Alteration of motor vehicle identification numbers | |
| Unlawful possession or use of destructive devices or explosives | |
| Any purposeful knowing, willful, or reckless violation of the criminal provisions of any federal or state environmental protection laws, rules, and regulations | |

Minor infractions such as parking tickets, smoking violations, and failure to shovel snow violations are not to be included under this requirement.

Include all permit or license denials, suspensions, and revocations pertaining to environment and public health laws. Include all judgments, settlements, charges, and convictions associated with such actions. Failure to provide a complete accounting of all such actions may result in permit disapproval, suspension or revocations, and further enforcement actions.

G. Changes

The applicant shall report to the regulating agency in writing, within 90 days, any additions or other changes to the information disclosed in the foregoing parts. Fingerprint cards must be submitted for all new key management personnel as required under Section **C.2a.**, above.

H. Certification of Information

I certify that to the best of my knowledge and after due investigation, the above information is true and accurate and complete.

Name (please type or print)

Title

Phone

Signature _____ Date _____

False statements may violate 18 U.S.C. 1001 and may incur state penalties.

ALLIANCE FOR UNIFORM HAZMAT TRANSPORTATION PROCEDURES

Instructions for Completing Motor Carrier Registration and Permit Application for the Uniform State Hazardous Materials Transportation Program

General application instructions:

- The application may be submitted by mail or in person to the designated state agency in the applicant's base state. (A list of designated agencies will be provided as an appendix to the application instructions.)
- The application should be completed by all motor carriers of hazardous materials who operate in states that administer the registration and/or permit programs for hazardous materials transporters, as indicated on the application cover page. See the "Uniform State Program" description for definitions and further information.
- The term "applicant" as used in the application refers to the company or individual seeking a registration or permit.
- The application must **be** completely filled out. If any item does not apply to the applicant **do not leave that item blank**. Provide non-applicable items with "N/A" and if appropriate, include a brief explanation.
- The application should be computer processed, typewritten, or filled out clearly and neatly with ink. Pencil is not acceptable. **Illegible** responses will result in your application being returned for correction.
- If the space provided on the form is not sufficient to answer any questions, attach additional sheets (in the same dimensions as the application) to the back of the application. Refer to the continuation sheet(s) on the original form.
- Remittance of all registration **and/or** permit fees is required at the time the application is submitted to the base state. The base state will not process the application unless all applicable fees are enclosed.
- All questions and all information requested shall be answered completely and truthfully. **Fraudulent**, deceptive, or misleading answers may result in denial or revocation of permit and potential initiation of enforcement activities. Applications will be returned to applicant if requested information is missing or omitted. Applicant is expected to make reasonable efforts to check his/her company records so that complete and accurate answers are provided. Falsification may subject applicant to additional penalties as provided for under state law.
- If the applicant encounters difficulty in completing the form or has any questions, please contact the staff for assistance. Correcting errors before submitting the form will greatly reduce the **possibility** of enforcement actions and/or delays due to return of your submittal for amendment.

I. Registration Application

1. Provide the name of the applicant company. All motor carriers of hazardous materials who operate in a state(s) that administers the Uniform State Hazardous Materials Transportation Registration Program must apply to the base state. See #7 for details on selection of a base state.
2. Provide the mailing address for the applicant. Provide the street address of the location where records are kept if different from the mailing address.
3. Provide the applicant's USDOT Motor Carrier Census Number as explained in 49 CFR Part 391.21 OR the identifying number issued to the applicant by the Interstate Commerce Commission (ICC). For intrastate motor carriers, provide the number issued to the applicant by the state or local agency that issues licenses or permits specifically related to the transport of hazardous materials. If none is required, enter the number issued by the state agency issuing general "for hire" operating authority or private motor carrier registration. Indicate which number is displayed on the applicant's vehicles.
- 4a. Provide the number issued to applicant for the Hazardous Materials Registration Program administered by the U.S. Department of Transportation Research and Special Programs Administration, if applicable.
- 4b. Provide EPA Identification Number(s) if the applicant company is required to have such a number in accordance with federal requirements for transporting hazardous waste under 40 CFR 263.11. If the applicant's services does not require an EPA ID number, please put "N/A" in the space provided.
- 4c. Mark the space provided if the applicant company transports hazardous waste subject to the manifest requirements of 40 CFR 262.20 et. seq., or applicable state law relating to the Uniform Hazardous Waste Manifest.
5. Provide the name of the primary contact at the applicant company for any problems regarding the registration (or permit) application.
6. Provide the name of the person with the applicant company to contact in case of an emergency involving a power unit owned or operated by the applicant company.
- 7a. Indicate the base state in the space provided. Determining the base state for the applicant follows a specific formula. First, the applicant should determine what type of operation it conducts and in which states it conducts those operations. States have the option of administering 1) only a registration program (Part I), 2) a registration and a permit program (Parts I and II), and 3) a registration, permit, and hazardous waste disclosure program (Parts I, II, and III). The applicant must first determine the states in which it operates and the highest "level" program that those states conduct. The applicant must determine which program elements it has to meet to be completely registered and/or permitted in the states in which it operates. However, the applicant cannot pick from these states at random, there is a successive order in which they must be evaluated. If an applicant transports hazardous waste in a state requiring a Part III permit, it must apply to a base state that administers a Part III permit. (See paragraph C for explanation of option to contract Part III to another state.)

- 7b. If an applicant does not transport hazardous waste in a Part III state, the first state to be considered as a base state must be the state of domicile, that is, the place in which its principal place of business is located and where the central records related to hazardous materials transportation are kept. If the state of domicile does not operate a registration/permit program, the applicant should use the state where the highest percentage of hazardous material transportation was done in the previous business year. If that state does not run a program, the applicant should use the state where the *next* highest percentage of hazardous materials transportation takes place. The applicant should continue down the list of states until it reaches a state that operates a registration **and/or** permit program.
- 7c. Pursuant to rules issued by the Base State Agreement Governing Board, an applicant who transports hazardous waste in a Part III state, yet whose principal place of business or highest percent of hazardous materials transportation is in another state, may apply to a base state not requiring Part III if such base state agrees to contract with a Part III state to process the applicant's Part III.
8. Applicant should list IRP percentages for miles traveled in each state in the previous IRP fiscal year. Applicant spreadsheets in the same dimensions of the application with this information may be attached. Intrastate carriers should allot 100% to the state in which they operate.
9. Estimate what percentage of the applicant's transport business involves hazardous materials. This estimate should be based on the total weight of hazardous materials shipments for which placards or marking of vehicles or the use of a hazardous waste manifest is required **and/or** the total number of hazardous materials shipments as a percentage of total shipments. (Further instructions will be developed to spell out these options.)
- 10a. Mark each class and division of hazardous materials that the applicant transported in the previous calendar year and expects to transport in the present calendar year.
- 10b. Mark the box provided if the applicant transports "exempt materials" with appropriate **DoT** exemptions.
11. Provide the total number of power units, both owned and leased, that the applicant uses on public roads. A power unit is fully defined in 49 CFR Part 390.5.
12. Provide the amount of registration fees being submitted to the base state. Attach the total fee as calculated for all participating program states. The base state will remit this fee to participating states according to current state fee structures. (An addendum listing current state fee structures will be developed and attached to the instructions.)
13. The certification must be an original signature (no stamps, etc.). Include all information requested: name (signature), title, phone, and date. The signature must be that of a company official duly authorized to make such certifications. False statements may violate state and federal law and may result in **fin**es and other penalties. False statements may also invalidate the registration form.

II. Permit Application

Note: Questions A4, B2, D, and E may trigger a request from the base state for additional information from the applicant.

All motor carriers of hazardous materials that operate in states that administer the uniform state hazardous materials transportation permit must submit the application to the base state. A prerequisite to a permit application (Part II) is completion of the registration application (Part I). Methods for determining the base state are described under Part I, section A, question 7.

Part A: Corporate Structure

1. Mark the type of carriage the applicant conducts.
2. Mark the type of business structure of the applicant. If your type of business is not listed, mark "other" and explain.
3. Provide the number of years the applicant has been in the business of hazardous materials transportation under the current name.
4. Answer yes or no as to whether the applicant or persons listed have been convicted, fined, assessed, or otherwise found culpable in legal proceedings related to hazardous materials transportation at the federal, state, tribal or local level in the last five years. If yes, explain such convictions, fines, or assessments. Include nature of violation, type of action taken, date of action, cause or reason for action and remedial activity undertaken to mitigate if any. Discuss any fines, penalties, or judgments levied.

(The base state may request documentation of such legal proceedings from the applicant, if appropriate.)

Part B: Permits Held

1. Provide a list of other hazardous materials transportation registrations, permits, licenses, or similar authorizations held in the last five years. Include the name of the issuing agency, the number of the registration or permit held, the years held (1990, 1991 etc.), and the type of material(s) covered by the permit—hazardous materials (HM), hazardous waste (HW), or radioactive materials (RAM). An applicant-prepared summary on a continuation sheet may be used in lieu of space on the application form.
2. List and explain any hazardous materials transportation registration/permit/licenses held by the applicant in the last five years that have been withdrawn, denied, suspended, or revoked, jurisdiction taking action, and the type of permit or registration involved.

(A "yes" answer with an inadequate explanation will trigger a request to the applicant for more detailed information about the circumstances in question. The base state also will contact the jurisdiction(s) that took the action(s) to determine whether the deficiencies that precipitated the action have been resolved.)

Part C: USDoT Safety Rating

Provide the applicant's most recent USDoT Safety Rating issued by USDoT and the date it was issued. If the applicant is unrated, attach a letter or other evidence of the applicant's request for a safety rating. Any change in the safety rating must be reported immediately to the base state.

Part D: History of Applicant's Major Violations Related to the Transportation of Hazardous Materials

1. List state and local **fin**es over \$1,000 and federal fines over \$2,500 that the applicant has been assessed for hazardous materials transportation violations in the last five years, including pending violations. Include all hazardous waste transportation violations.

For each violation, provide the following information.

- The state, **local**, or federal agency that cited the violation.
- Date of the violation.
- The nature of the violation.
- The type of hazardous material(s) involved in the incident.

Please add additional sheets if necessary. Persons completing the application should check with company officials knowledgeable about such **fin**es and violations to ensure full and acceptable disclosure. **An** applicant's prepared summary on a continuation sheet may be used in lieu of space on the application. (Any violations may trigger a request for additional information, including but not limited to interviews with the jurisdictions that imposed fines and interviews with appropriate company officials.)

2. Indicate yes or no. If applicant has been **fin**ed or convicted in last five years for transporting hazardous materials without a license, permit, or registration, please explain, giving dates and local, state, or federal agencies involved as well as type of violation, action of jurisdiction, and cause or reason for violation. (A "yes" answer triggers a request for more detailed information on convictions and penalties. The base state shall interview representatives of the jurisdictions that discovered the violation to gain details.)
3. Provide the total number of hazardous materials incident reports (**USDOT** form 5800) **file**d with **USDOT** in the previous calendar year. (Base state must review incident reports and compare to number of power units and number of miles. Based on volume or absence of volume, additional information may be requested from RSPA and state and local jurisdictions.)
4. Provide the total number of miles the applicant ran in the previous calendar year including all loaded and empty miles, not just hazardous materials mileage.
5. Provide the number of applicant vehicles/drivers separately totaled that have actually been placed out of service in the past calendar year.
6. Provide the number of hazardous materials out-of-service violations received by the applicant in the past year.

(For Questions **5** and **6**, if there are an excessive number of violations, the base state may review the out-of-service violation notices and request information from the company concerning corrective actions that have been taken to address the causes of the violations.)

7. Provide the number of roadside vehicle inspections received in the past year pursuant to 49 CFR Part 396.

Part E: Response to Reportable Hazardous Materials Transportation Incidents

1. Indicate yes or no. Explain any accident or spill related to hazardous materials transportation in the last five years that resulted in mandated remedial action from a state or local agency based on an inadequate cleanup. Include date and location of incident and any actions taken by supervising agency.
2. Indicate yes or no. If applicant has been assessed more than ~50,000 in the last five years for a clean-up related to hazardous materials, please explain the spills and outline delineation of costs (i.e. environmental restoration, payment to emergency officials, clean-up). Include dates, locations, and actions mandated by the supervising jurisdiction(s).

(For Questions E1 and E2, an inadequate explanation shall trigger a request for more specific information about such incidents. The base state must contact the jurisdiction where the incident(s) occurred for more information. The base state may ask for a copy of the applicant's emergency response plan and details of its hazardous materials employee training program.)

Part F: Vehicle Information

1. Mark the category and number of vehicles the applicant owned and leased as of December 31 of previous calendar year. If known, provide the percentage of those types of vehicles used in hazardous materials transportation activity. The percentage of hazardous materials transportation refers to the whole fleet, not to each vehicle.
2. List the number of each type of cargo tanks owned and/or operated by the applicant as of December 31 of the previous calendar year.

Part G: Terminals

1. List number of and address of all applicable terminals owned and operated by the applicant.

Certifications:

Each certification should be separately initialed by the appropriate official of the applicant company. All information in the permit, including the certifications, is subject to a background check and future audits. If all information is not found to be true and accurate, this will be grounds for withholding, suspending, or revoking the permit.

Part H: Inspections

1. Periodic inspections are required by USDOT as outlined in 49 CFR 396.17. This certification ensures that all vehicles owned and/or operated by the applicant have been inspected in the past year and that documentation of the inspection is on file.

Part I: Financial Responsibility

1. Financial responsibility for transporting hazardous materials is required by USDOT in 49 CFR Part 387. This certification guarantees that the applicant will maintain the proper insurance policies, surety bonds, or other types of financial responsibility at all times and has the appropriate MCS-82 and MCS-90 forms on file. Provide the address where these forms are kept and the information requested (insurance or surety company name, dollar

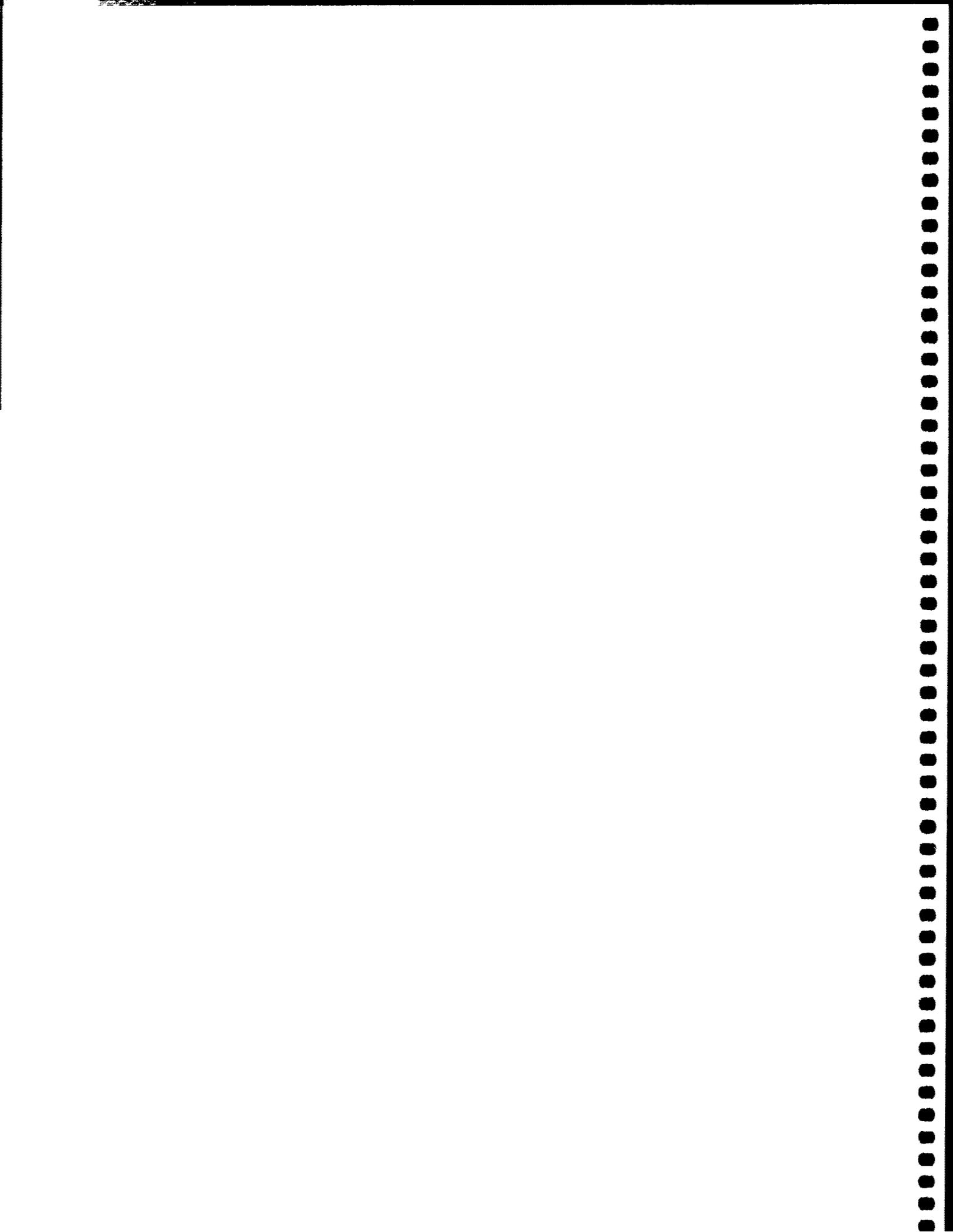
coverage, expiration date, and location of forms). Notice of changes in coverage and/or changes in insurance carrier should be provided immediately to the base state.

Part J: Other Certifications (all certification boxes must be initialed)

1. This certification ensures that all applicant drivers maintain a current Commercial **Driver's** License (CDL) with all applicable endorsements subject to 49 CFR Part 383.
2. This certification assures that the applicant observes all bulk packaging laws required by the **USDOT**, found in 49 CFR Parts 172-180 inclusive.
3. This certification guarantees that the applicant keeps an emergency response plan on file. The emergency response plan must be in compliance with OSHA 29 CFR **1910.120(Q)** regulations.
4. This certification affirms that the applicant is aware of state routing regulations and instructs its drivers on the appropriate routes and requirements.
5. This certification guarantees that all applicable employees have been fully trained to deal with hazardous materials as outlined in OSHA 29 CFR 1910.1200 and DOT 49 CFR 172 subpart H and 177.816.
6. The certification is a general certification ensuring that the applicant will abide by all applicable federal, state, and **local** laws and regulations.
7. This certification ensures that all information provided in the permit application is correct. Provide all information requested on the permit: signature, name, title, date and phone. The application must be signed by a **duly** authorized company official. A "duly authorized company official" is one designated by a corporate officer to sign such applications. A letter from a corporate officer making such a designation must be on file at the applicant company's principal place of business. False statements may violate federal and state law and may result in **fin**es and other penalties.

Part K: Permit Fee

1. Write in the amount of the permit fee. The fee schedule to be used in calculating applicant fees will be developed using information from the pilot program and will be provided as Appendix A to the permit application.



Section 6
PROPOSED FEDERAL REGULATION

The Alliance submits the following proposed language for the federal regulation that will establish the Uniform Program.

PART _____ **HAZARDOUS MATERIALS - UNIFORM PROGRAM FOR STATE
REGISTRATION AND PERMITTING**

Authority: 49 U.S.C. App. § 1801 et seq.

Subpart A - General Information and Definitions

sx0.001 Purposes

This Part establishes uniform procedures for state registration and permitting of the transportation of hazardous materials. The overall objective of the regulatory program is promotion of safety in the transportation of hazardous materials by motor carrier. The regulatory program replaces the myriad existing state registration and permitting schemes with a uniform set of forms and procedures that will be applied by each participating state. The uniform procedures established in this Part seek to enhance public health and safety by increasing compliance with state registration and permitting requirements for the transportation of hazardous materials.

- (a) The primary purposes of the uniform state registration program are the identification of persons who transport, cause to be transported or ship hazardous materials by motor carrier, and the generation of revenues for state programs that promote the safe transportation of hazardous materials.
- (b) The primary purpose of the uniform state permitting program is to prevent unqualified motor carriers from transporting hazardous materials in jurisdictions that elect to participate in the Uniform Program.

xxo.002 Definitions

- (a) Base state is the state in which a motor carrier must obtain a registration and/or permit as set forth in this Part;
- (b) Base State Agreement is the agreement among participating jurisdictions electing to register or permit motor carriers and/or register shippers of hazardous materials;

- (c) Hazardous materials means:
- [1] hazardous materials of a type and amount that requires the transport vehicle to be placarded pursuant to 49 C.F.R. 172;
 - [2] "hazardous substances" and/or "marine pollutants" when transported in bulk packaging as defined in 49 C.F.R. 171.8;
 - [3] hazardous waste of a type and amount that requires the shipment to be accompanied by a Uniform Hazardous Waste Manifest contained in 40 C.F.R. 262, including "state designated hazardous wastes." State designated hazardous wastes are additional hazardous wastes that have been officially determined by states that have been authorized by the United States Environmental Protection Agency to manage RCRA programs within their respective states.
- (d) Motor carrier means a person that owns or operates one or more motor vehicles that transport hazardous materials;
- (e) Participating jurisdiction means a state, or political subdivision to the extent permitted by this part, that has elected to participate in the Uniform Program and has ratified this election by becoming a signatory to the base state agreement;
- (f) Participating state means a state that has elected to participate in the Uniform Program and has ratified this election by becoming a signatory to the base state agreement;
- (g) Person means all entities, including but not limited to natural persons, sole proprietorships, corporations, partnerships, and federal, state and local government agencies;
- (h) Principal place of business means the state in which a motor carrier maintains its central records relating to the transportation of hazardous materials;
- (i) Registration year means a period of 12 consecutive months during which a registration issued pursuant to the Uniform Program remains valid;
- (j) Shipper means a person that causes hazardous materials to be transported;

- (k) State a n s the 50 states and the District of Columbia:
- (l) Uniform Proaram means the program for uniform state registration and permitting of hazardous materials transportation established by this Part.

Subpart B - The Base State Agreement

xx1.001 The Uniform Program

- (a) States (and political subdivisions, to the extent permitted by these regulations) may exercise the authority to administer registration and/or permitting programs for carriers of hazardous materials pursuant to the Uniform Program only if they are participating jurisdictions.
- (b) A registration or permit issued by a participating jurisdiction pursuant to the Uniform Program shall be accepted as valid, and legally enforceable, in all participating jurisdictions; provided that if a court of competent jurisdiction should determine that a state, political subdivision, or Indian tribe may not enjoin or otherwise restrain the operation of an unqualified hazardous materials motor carrier in their state, the provision for reciprocity established in this section shall be deemed **non-severable** and null and void. If this should occur, non-base states shall not be required to honor permits issued by base states.
- (c) After the effective date of the regulations set forth in this Part, no state (whether or not a participating jurisdiction) shall establish, maintain, or enforce any requirement that relates to the subject matter of the regulations contained in this Part unless such requirement is the same as the regulation or regulations contained in this Part. The subject matter of Section 22 shall be narrowly construed, and is strictly limited to the uniform registration and permitting forms and procedures for persons who transport, cause to be transported, or ship hazardous materials by motor carrier. These regulations do not affect the right of States, political subdivisions, or Indian tribes to enact or enforce state laws governing the conduct of motor carriers or their operations within their individual jurisdictions. These regulations do not affect the power of States to enjoin or otherwise restrain the operation of hazardous materials motor carriers within their jurisdiction, based on violations of

federal laws or regulations, failure to comply with the terms and conditions of a uniform permit or registration, or violations of applicable state and local laws and regulations,

- (d) The base state agreement shall implement the **uniform** registration and permitting forms and procedures established pursuant to this Part.
- (e) Every state that is a participating jurisdiction on the effective date of these regulations shall appoint one representative to a **commission** that shall have the **authority** to establish by-laws for **administration** of the base state agreement. The by-laws shall provide that the promulgation of policies and procedures for **implementation** of the **Uniform Program**, and the **promulgation** of such additional regulations as are necessary and proper to the **administration** of the **Uniform Program**, shall be by a two-thirds vote of the States participating in the Uniform Program, The by-laws shall include specific procedures for dispute resolution, and such procedures shall cover, but not be limited to, disputes between motor carriers and participating jurisdictions and disputes between participating jurisdictions. The by-laws shall become effective on the date on which at least 26 states have become participating states. Until such time as the by-laws become effective, the **commission** established pursuant to this subpart shall have the authority to administer the **Uniform Program** and to amend the base state agreement, provided that any such **amendment** requires the approval of at least two-thirds of the **members** of the **commission**.
- (f) The by-laws shall establish a **Governing Board**, The **Governing Board** shall have the power to:
 - [1] establish and monitor a National Repository to administer the base state agreement pursuant to the policies and direction of the Governing Board;
 - [2] review the performance of the National Repository each registration year;
 - [3] issue binding interpretations of the base state agreement;
 - [4] establish and oversee a state program compliance accreditation and review process to ensure the integrity of the uniform registration and permitting program.

- (g) A National Repository shall be established by the Governing Board, at such place as the Governing Board shall designate. Operation of the National Repository shall be funded by assessments imposed on participating jurisdictions based on a formula to be included in the by-laws. The National Repository shall:
- [1] administer an audit and accreditation program to ensure that participating jurisdictions are engaged in accurate revenue collection and distribution and are preserving the integrity of the base state agreement;
 - [2] maintain a central data base of all information provided by registered and permitted shippers and carriers;
 - [3] provide on-line access to the central data base for participating jurisdictions;
 - [4] provide public access to information in the central data base for a reasonable fee (to be determined by the National Repository) covering the costs of providing access; provided that proprietary information related to commercial relationships, financial information, routing, and specific products gathered as part of the permitting process shall remain confidential and may be used only by the base state, other participating jurisdictions in which the motor carrier operates, and the National Repository for purposes of enforcing compliance with permitting requirements;
 - [5] maintain a registry of all "state designated wastes";
 - [6] administer a dispute resolution system, under the supervision of the Governing Board, that participating jurisdictions must use to resolve differences regarding the interpretation of the base state agreement, and that carriers or shippers may use to resolve procedural disputes involving application of the registration or permitting requirements set forth in this Part;
 - [7] design, coordinate, and/or conduct training related to policies and procedures associated with the Uniform Program for participating jurisdictions and other jurisdictions, members of the hazardous materials transportation industry, and other interested parties;

- [8] serve, under contract to the **Department** of Transportation, as a clearinghouse for routing designations and restrictions;
- [9] establish, pursuant to policies and directions set forth by the by-laws or promulgated by the Governing Board, a **comment** and complaint tracking and retrieval function by which **members** of the public may register complaints about a specific carrier's actions directly to the repository or to the permitting authority of the participating jurisdiction in which they reside; and
- [10] perform other tasks as authorized by the Governing Board.

xx1.002 **Selection of Base State**

(a) The base state for a motor carrier covered by this section shall be determined in the following manner:

- [1] If a motor carrier does not operate in a state that **is** a participating jurisdiction, this section does not apply and the motor carrier need not identify a base state for purposes of the **Uniform** Program.
- [2] If a motor carrier operates only in a state or states that are participating jurisdictions but require only a registration pursuant to subsection **xx2.002**, the motor carrier's base state shall be:
 - (A) the state that is the motor carrier's principal place of business, if such state is a signatory to the base state **agreement**, or
 - (B) if the state that is the motor carrier's principal place of business is not a signatory to the base state **agreement**, the state that is a signatory to the agreement in which the motor carrier records a plurality of total miles traveled.
- [3] If a motor carrier operates in one or more states that are participating jurisdictions and require a national permit pursuant to subsection **xx5.001**, the motor **carrier's** base state shall be:
 - (A) the state that is the motor **carrier's** principal place of business, if such a

state is a participating jurisdiction and requires the national permit; or

- (B) if the state that is the motor carrier's principal place of business is not a signatory to the base state agreement or does not require the national permit, the state that is a signatory and requires the national permit in which the motor carrier records a plurality of the total miles traveled.

[4] If a motor carrier operates in one or more states that are participating jurisdictions and that require the Part III business disclosure pursuant to subsection **xx5.001** for hazardous waste carriers, the motor carrier's base state shall be identified in the manner set forth in subsection [3] above. If the base state does not require the Part III business disclosure, such jurisdiction shall, for purposes of conducting the business disclosure investigation, subcontract with the jurisdiction that:

- (A) is a participating jurisdiction;
- (B) requires the Part III business disclosure; and
- (C) is the participating jurisdiction in which the motor carrier records a plurality of total miles traveled.

(b) A motor carrier may request that the Governing Board approve a participating jurisdiction as the base state other than that identified by the method set forth in this section, if, and only if, the following criteria are satisfied:

- [1] such request is not based on an attempt by the motor carrier to circumvent any requirement of this section or avoid enforcement of this section by its current base state or any other signatory to the agreement;
- [2] approval of the request will improve administration of this section; and
- [3] the Governing Board consults with the jurisdiction that would otherwise be the base state and such jurisdiction concurs with the motor carrier's request.

- (c) Once a base state has been identified in accordance with the method in this subsection, the jurisdiction identified as the base state shall accept all the responsibilities of a base state for such motor carrier.

Subpart C - Registration of Hazardous Materials Carriers

Registration Generally

- (a) No person may transport by motor carrier any hazardous material in any participating jurisdiction requiring registration of hazardous materials transportation unless that person maintains a valid registration pursuant to this Part.
- (b) Each participating jurisdiction shall designate an agency or department that shall be responsible for **administering** registration pursuant to this Part and the base state agreement*

xx2.002 Motor Carrier Registration

- (a) A motor carrier shall register in its base state,
- (b) The registration form shall require the motor carrier to provide the **following** information:
- [1] company name;
 - [2] United States Department of Transportation motor carrier census number and ICC motor carrier number;
 - 131 Environmental Protection Agency transporter identification number, if applicable;
 - [4] address for purposes of correspondence;
 - [5] company contact and title;
 - [6] company contact's telephone number;
 - [7] phone number for notification in the event of an emergency;
 - [8] base state;
 - [9] participating jurisdictions in which the motor carrier intends to transport hazardous materials;

- [10] International Registration Plan allocation percentages or their equivalent;
 - [11] percentage of total activity that involves transport of hazardous materials;
 - [12] the classes of hazardous materials transported;
 - [13] the amount of the registration fee tendered;
 - [14] certification of accuracy of all information contained in the registration form;
 - [15] signature of authorized official; and
 - [16] date of application.
- (c) The base state shall be responsible for
- [1] processing the registration form for each carrier for which it is the base state;
 - [2] collecting registration fees for all participating jurisdictions in which the motor carrier transports hazardous material;
 - [3] distributing collected registration fees to participating jurisdictions;
 - [4] conducting audits as necessary to ensure that the carrier is accurately reporting its hazardous materials transportation activity; and
 - [5] transmitting motor carrier registration information from the participating jurisdiction to the National Repository quarterly.
- (d) A registration pursuant to this subpart shall remain valid for one registration year, and must be renewed for each successive registration year in which the motor carrier intends to transport hazardous materials in a participating jurisdiction.
- (e) Upon registration, the base state shall provide a "notice of registration" to the motor carrier that includes a company registration number.
- (f) A registered motor carrier must maintain evidence of the registration issued by the participating State in every vehicle operating pursuant to the registration.
- (g) All information obtained by a base state for purposes of registration shall be public information, provided that proprietary information including but not

limited to information related to commercial relationships, routing, and specific products shall not be made public. Proprietary information may be shared among participating jurisdictions for the purpose of administering the Uniform Program.

xx2.003 Motor Carrier Registration Fees

- (a) Every motor carrier registered pursuant to this Subpart shall pay a registration fee to every participating jurisdiction in which the motor carrier transports hazardous materials.
- (b) The fee shall be in an amount established by each participating jurisdiction as long as such fee is reasonable and equitable,
- (c) The registration fee(s) shall be payable to the designated authority of the base state and shall be due at the time of registration.
- (d) All revenues generated by participating jurisdictions shall be used by the collecting State to enhance the safe transportation of hazardous materials as mandated in the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615, as codified and amended at 49 App. U.S.C. § 1801 et. seq.
- (e) Base states may assess an additional fee to cover the cost of processing the registration application, provided that the base state may not do so if the base state's registration fee already recovers the cost of processing registration applications*

Subpart D - Registration of Hazardous Materials Shippers

xx3.001 Registration

- (a) A participating jurisdiction may elect whether to register shippers.
- (b) Participating jurisdictions electing to register shippers shall do so in the same manner as permitted under the federal registration program as set forth in 49 C.F.R. 107 et. seq.
- (c) A participating jurisdiction may require a shipper to register only if the shipper maintains facilities in the participating jurisdiction, including distribution facilities, terminals, or warehouses.

- (d) A participating jurisdiction electing to register shippers shall establish a fee for registration as long as such fee is equitable and reasonable.
- (e) A shipper applying for registration shall submit a copy of its federal registration form as required by 49 C.F.R. 107 et. seq.

Subpart E - Permitting

xx4.001 Permittins Generally

- (a) Participating jurisdictions may require permits for the transportation of hazardous materials.
- (b) No person may transport hazardous materials by motor carrier in a participating jurisdiction that requires permits for the transportation of hazardous materials unless that person has obtained a permit pursuant to this subpart.
- (c) A motor carrier shall apply to its base state for a permit.
- (d) The base state shall:
 - [1] process the permit application for each carrier for which it serves as the base state;
 - [2] collect a permitting fee, which shall be determined by the participating jurisdiction at a level no greater than reasonably necessary to recover the cost of the permitting process;
 - [3] conduct investigations or audits of permit applicants;
 - [4] issue evidence of the permit, a copy of which must be carried inside each vehicle transporting hazardous materials;
 - [5] perform periodic reviews of the motor carrier's operations; and
 - [6] determine whether violations of permitting requirements should result in denial, suspension, or revocation of a permit.
- (e) A permit issued by a base state confers on the permit holder the authority to transport hazardous materials in all participating jurisdictions, unless such authority has been restricted or denied for cause by a participating jurisdiction.

- (f) The permit application shall require the applicant to certify compliance with all requirements set forth in the application form.
- (g) Failure to comply with the certification is cause for denial, suspension, or revocation of the permit.
- (h) The base state may conduct additional investigations into a motor carrier's operations to determine whether the carrier has in fact complied with the certifications in its permit application.
- (i) Permits shall be valid for a period of three years unless the carrier's operations change in such a manner that would require a different level of permit under the Uniform Program (i.e., transporting hazardous waste into a participating jurisdiction requiring a Part III disclosure **statement**).
- (j) At the **commencement** of the second year and at the **commencement** of the third year of the **permitting** period, a motor carrier **holding** a permit must certify that there are no substantial differences in its operations as compared to the date the permit was issued, and must recertify its compliance pursuant to **xx5.001(e)**. This certification shall be contained on the base state's annual registration form,
- (k) A base state that both registers and permits motor carriers pursuant to the **Uniform** Program shall use a single form for both processes. Registration information shall appear as part I of the form.
- (l) A participating jurisdiction **may** require further disclosure of relevant information from transporters of hazardous wastes. Such **information** shall be contained in part III of the application.
- (m) Proprietary information including but not limited to information related to **commercial** relationships, routing, specific products, and financial **information** contained in the permit and Part III disclosure statement shall not be made public. Proprietary information may be shared among participating jurisdictions and the National Repository for the purpose of **administering** the Uniform Program.
- (n) Participating jurisdictions shall not issue **single-trip** permits that authorize or imply any authority to transport hazardous materials outside the jurisdiction issuing the permit. Any participating jurisdiction that issues a single-trip **permit shall** inform the National Repository of such action.

xx4.002 Permitting of Owner/Operator Vehicles

- (a) A permitted motor carrier that transports hazardous materials under its permit using owner/operator vehicles is responsible for the operations of such vehicles and drivers, including all assurances and certifications contained in the uniform permit, as if such vehicles were owned and operated by the permitted carrier and the driver were employed by the motor carrier, including providing information on the owner/operator that would be required in Part III business disclosure.
- (b) A violations of hazardous materials transportation requirements that results from the operation of an owner/operator vehicle while operating under a motor carrier's permit authority shall constitute a violation by the permitted motor carrier and shall be reported to the base state at the time of future application or renewal of the national permit.
- (c) This section does not apply to instances in which a motor carrier subcontracts with a second motor carrier for the transportation of hazardous materials. In such a case, the subcontractor must have its own registration and/or permit pursuant to the Uniform Program. For purposes of this subsection, a subcontractor shall be a person or entity with whom a transporter of hazardous materials contracts to perform a service related to the transport of hazardous materials.

Subpart F - Enforcement

xx5.001 Enforcement of the Uniform Program

- (a) All base states and all participating jurisdictions in which motor carriers transport hazardous materials shall enforce the requirements of the Uniform Program. The enforcement authority under this subsection shall include, but not be limited to:
 - [1] inspections, including physical examination and certification of specific vehicles, containers, cargo, and drivers;
 - [2] on-site examinations of a carrier's or shipper's operations, including physical inspections and review of the company's operating systems;
 - [3] on-site audits of a carrier's records to verify information on which a permit is based and to determine compliance with Uniform Program requirements;

- [4] in-house reviews of a company's records at the appropriate regulatory agency of a participating jurisdiction;
 - [5] periodic reports;
 - [6] inspection of vehicles and drivers en route, principally at weigh stations and points of entry;
 - 171 investigations of violations alleged by **members** of the public;
 - [8] comparison of data available from two or more independent sources; and
 - [9] the use of subpoenas, depositions, and other civil *discovery* powers **authorized** by the laws of the participating jurisdiction.
- (b) All enforcement authority identified in this section shall be available to the base state and to any other participating jurisdiction in which a carrier transports hazardous materials.

xx5.002 Enforcement of State Law

- (a) Nothing in this Part shall limit a participating jurisdiction from enforcing state and local laws governing the operation of hazardous materials motor carriers within their jurisdiction, based on violations of federal laws or regulations, failure to comply with the terms and conditions of a **uniform** permit or registration, or violations of applicable state and local laws and **regulations**.
- (b) Penalties for violation of hazardous materials transportation requirements, including but not limited to those established pursuant to the Uniform Program, shall be the penalties established by the law of the participating jurisdiction in which the violation occurs. Nothing in this Part shall affect the continuing force of any penalty imposed by a participating jurisdiction for violation of law prior to the effective date of this Part,
- (c) A participating jurisdiction that is not the base state for a motor carrier may take any appropriate action against a motor carrier authorized under the **jurisdiction's** law, up to and including suspension of the motor carrier's authority to transport hazardous materials **within** the jurisdiction.

- (d) A participating jurisdiction that has taken enforcement action against a motor carrier **may** determine the length of time that any such penalty applies and the conditions that must be satisfied prior to its removal.
- (e) A participating jurisdiction that suspends the right of a motor carrier to transport hazardous materials within the jurisdiction must report any such action, and the reasons therefor, to the base state of the suspended motor carrier.
- (f) Upon receiving information that a motor carrier's right to transport hazardous materials within a participating jurisdiction has been suspended, the base state shall investigate the reasons for such suspension to determine whether the violation resulting in suspension shall require the suspension or revocation of registrations or permits issued pursuant to the Uniform Program.
- (g) For cause, the base state may suspend a registration or permit issued pursuant to the Uniform Program and may establish the conditions that must be satisfied prior to the removal of any such suspension.
- (h) For cause, the base state may revoke a registration or permit issued pursuant to the Uniform Program. If a registration or permit is revoked, before again transporting hazardous materials, the motor carrier must **reapply** for a new registration or permit pursuant to the forms and procedures of the Uniform Program.
- (i) A base state that suspends or revokes a registration or permit shall provide the person against whom such action has been taken with a detailed statement of reasons for the decision to suspend or revoke the registration or permit. The base state shall provide a copy of the statement to the National Repository.
- (j) Participating jurisdictions shall notify the National Repository of all pending actions against shippers or carriers within the participating jurisdiction's authority as a base state.
- (k) Violation of **any** requirement imposed by a participating jurisdiction that is not also a violation of a requirement associated with the Uniform Program shall not be grounds for revocation or suspension of a registration or permit issued pursuant to this Part.

Section 7 PILOT PROGRAM

At its third meeting in St. Louis, Missouri, on September 21-22, 1993, the Alliance requested that staff proceed with the design and implementation of a two-year pilot project, involving three to four states, to confirm the validity of the Alliance's recommendations and aid the Federal Highway Administration (**FHWA**) in addressing comments during the rulemaking process.

Based on the Alliance's recommendation, the FHWA has funded a two-year demonstration by four states. During the first year, each state will develop the internal administrative procedures and organization to conduct the test of the Alliance's recommended program. During year **two**, the four states will administer the program for a targeted group of motor carriers involved in the transport of hazardous materials.

Pilot Program Objectives

The pilot is designed to test every aspect of the proposed Uniform Program, including but not limited to the following.

- Determine the barriers within individual states of adopting the uniform procedures and operating under a base state system.
- Estimate the costs to states of participation in a uniform base state program including personnel and hardware/software requirements.
- Test the reciprocity provisions of a base state agreement including collection, distribution, and auditing of registration fees, issuance of a national hazardous materials transportation permit, and enforcement of national standards.
- Assess the extent to which the base state system reduces the administrative burden on the regulated community and on states.
- Determine the extent to which the uniform system enhances protection of the public health and safety.
- Test the provisions related to options for local hazardous material regulation under the uniform state program.
- Examine the role and operations of a governing board and national repository.

In addition, one of the pilot states will test the feasibility of state administration of the federal hazardous materials registration and permitting program.

Participating states will have three options for implementation of the Uniform Program on a demonstration **basis**. The options are as follows.

- The pilot state may apply the requirements of the Uniform Program to all motor carriers (interstate and intrastate).

- The second option is to apply the requirements only to domiciled, interstate motor carriers that operate in two or more of the pilot states. This option targets those motor carriers that would be covered under any reciprocity provisions associated with the Uniform Program. It would significantly reduce the number of motor carriers subject to the new program regulations during the pilot phase. Additionally, the pilot state might obtain executive or legislative authority to conduct the "demonstration" without completely revising state laws and/or regulations.
- The third option is to select an even smaller sample of interstate motor carriers. The state might even seek volunteers from among domiciled motor carriers that would support state efforts to test the Uniform Program. The state would then work more closely with each participating motor carrier to assess the procedures contained in the Uniform Program. The disadvantage of this approach is that the pilot state would not get a true estimate of the administrative burden and cost of operating a full-scale program.

During the second year, each pilot state will be subject to a preliminary peer review to determine the extent to which the state's procedures are consistent with the Uniform Program. The peer review will be conducted by staff and representatives of one or more of the other pilot states. The purpose of the review is to identify issues that will require additional attention prior to universal implementation of the uniform state program.

State Participation

Following the September 1992 meeting, staff canvassed current state hazardous materials transportation program administrators to solicit interest in state participation in the pilot effort. The states of California, Nevada, Ohio, and West Virginia were eventually selected based on:

- a commitment from the Governor and state legislature to take the necessary legislative and administrative actions to conduct the state's hazardous materials transportation programs under the principles and operating procedures of the Alliance's recommendations;
- a commitment by the regulated community within that state to support participation in the pilot program;
- experience in registration and permitting of hazardous materials, hazardous substances, and radioactive materials transportation;
- geographical diversity; and
- the extent to which localities currently administer hazardous materials transportation programs. (At least one pilot state should have a major locality with a hazardous materials transportation registration or permitting program.)

Governing Board and Repository

The Alliance also created an eight-member interim governing board that will oversee the pilot program. Additionally, the interim governing board will test any dispute resolution mechanism contained in the recommended base state agreement. The **governing** board membership consists of one representative from each of the four pilot states and four at-large members from states that are likely to join any eventual base state agreement. At least one at-large slot will be reserved for an official from a locality that is currently operating a local registration or permitting program. A second at-large slot was reserved for a state legislator.

The interim **governing** board will meet at least four times during the two-year demonstration. One meeting will be held in each of the pilot states. The meeting agenda will include a hands-on tour of the host state's registration and/or permitting operations.

The governing board will be staffed by the current Alliance staff, serving as an interim repository. Additionally, the Alliance staff will:

- document the experiences of the pilot states;
- conduct on-site visits to assess the extent to which the pilot states have adopted, and are operating under, the provisions of the Alliance's Uniform Program;
- produce and distribute a quarterly newsletter to inform interested parties about issues that emerge during the pilot program; and
- serve other selected repository functions outlined in the uniform Uniform Program (e.g., maintain information on enforcement actions against carriers).

Based on its experience working with the pilot states, the Alliance staff will prepare a detailed estimate of the staffing and financial requirements for full operation of the national repository. The assessment will look at personnel (number and qualifications), equipment, communications (e.g., on-line access to national data), printing, travel, and meeting costs.

State Administration of the Federal Registration Program

To support the concept of "one-stop shopping," the Alliance-sponsored pilot program also will include a demonstration of potential state administration of the federal registration program. The Public Utilities Commission of Ohio (**PUCO**) has volunteered to take on this additional task.

A series of meetings between PUCO and the Research and Special Programs (RSPA) division of FHWA have been held to discuss options for state administration. These discussions have raised a number of issues that may eventually determine the potential for state administration of the federal registration program.

- Will the state be given a block of federal registration numbers so that it can actually issue the registration as opposed to merely passing it on to **USDOT** for processing?
- Is the federal government willing to consider staggered registration dates so that a carrier can apply for its federal registration number when it applies for its state permit?

- Since the state permit application requires the federal registration number, will the state have to defer an application until the federal number is issued?
- What are the benefits to the state of administering the federal program? Would the additional federal registration fee be viewed by the carrier as a state imposed fee? Would the state share in the RSPA processing fee for purposes of administering the program?

Pilot Program Activities

The demonstration is being conducted through a contract between FHWA and the National Governors' Association and the National Conference of State Legislatures. The twenty-four-month contract, dated July 1, 1993, includes the following ten tasks.

Task A: Select States for Pilot Test. Within thirty days of the contract date, NGA and NCSL will select four states to test the Alliance's model base state program.

Task B: Establish a Governing Board for the Pilot Test. Within forty-five days of the effective date of the contract, NGA and NCSL will establish an interim governing board (the board) for the pilot test. The board will consist of up to eight members including:

- one representative of the executive branch from each of the pilot states (maximum of four);
- one state legislator;
- one state official with experience in motor carrier enforcement issues including on-road enforcement;
- one representative of a locality that currently operates a local registration and/or permitting program; and
- one at-large member.

To the extent possible, the four members of the interim governing body not representing a pilot state should be active members of the Alliance who were continually involved in the development of the Alliance's recommendations. Representatives of the regulated industry will be asked to serve as non-voting advisors to the board.

Task C: Kick-Off Meeting. Within sixty days after the effective day of the contract, NGA and NCSL will convene a kick-off meeting of the board. At a minimum, the meeting will cover the:

- objectives of the pilot program;
- responsibilities of the board and staff under the contract with FHWA;
- schedule for producing a detailed work plan for the pilot program (Task D);
- tentative schedule and content of future board meetings; and

- process for communicating the activities of the board to government and industry representatives.

Task D: Develop a Plan for the Pilot Test of the Model Base State Hazardous Materials Transportation Program. Within 130 days after the effective date of the contract, NGA and NCSL will develop a plan for the pilot phase of the Alliance's Uniform Program. The plan will include:

- the proposed methods for reaching each contract objective;
- a schedule for the two-year pilot program including milestones, time frames, and beginning and ending dates for all contract activities for all tasks listed below; and
- a tentative schedule for all meetings of the governing board.

Task E: Develop Administrative Procedures for States to Implement the Pilot Test. Within 270 days after the effective date of the contract, NGA and NCSL, working with the members of the board and industry representatives, will develop administrative procedures for state administrators to use in conducting the Uniform Program. The procedures should cover both the inclusion of local program options under the Uniform Program and the method by which states might administer the federal registration and permitting program.

Task F: Identify and Design the Functions for a Hazardous Materials Program Repository. Within 180 days of the effective date of the contract, NGA and NCSL, working with the board and industry representatives, will develop a report to the governing board on the role and functions of a national repository, including but not limited to:

- staffing meetings of the board;
- preparing materials related to the dispute resolution function of the board;
- designing and operating a central database related to interstate registrations and permits, bad actors, major violations, and suspensions/revocations; and
- distribution of information to states.

NGA will subcontract with an ADP consultant to design the database function including identification of data elements, hardware, software, and telecommunications options.

Task G: Conduct Reviews of Pilot State Procedures. Within 270 days of the effective date of the contract, NGA and NCSL, with support from the pilot states, will conduct reviews of each pilot state's procedures for implementing the Uniform Program. NGA will assemble a **review** team, consisting of representatives from no less than two other pilot states and representatives of industry, to participate in an on-site visit to each pilot state. Areas to be reviewed in each state include, but are not limited to:

- organizational structure;
- systems development;

- involvement of the regulated industry;
- education and training; and
- barriers to pilot program implementation.

Task H: Report on Progress of Setting Up the Pilot Test. Within 420 days of the effective date of the contract, NGA and NCSL will draft a report describing the organization, systems, involvement of industry, and education and training efforts of each of the pilot states. The report will also document barriers that each state faced in setting up its procedures and how the state addressed these barriers.

The report also will outline criteria by which NGA, NCSL, and the board will evaluate the success of the Alliance's proposed model program and the ability of states to assume administrative responsibility of both the federal and state hazardous materials transportation registration and permitting programs. The evaluation criteria for each state may be tailored to specific regulated industry targets and specific procedures employed by individual states.

Task I: Conduct a One-Year Pilot. Within 730 days of the effective date of the contract, NGA, NCSL, the four pilot states, and the board will conduct a one-year test of the feasibility of the Alliance's proposed Uniform Program. Additionally, one of the pilot states will test the ability of states to administer the federal registration and permitting programs. The test will extend from 365 days following the effective date of the contract to 730 days following the effective date of the contract. During this pilot phase, NGA and NCSL will provide and coordinate technical assistance to the pilot states.

During the one-year pilot program, NGA and NCSL will perform the functions of a national repository that would eventually support the uniform state program.

Task J: Report on the Pilot Test. At the mid-point of the pilot program, NGA and NCSL will draft an interim report on the progress by the pilot states to implement the Alliance's proposed program. The report, at a minimum, will include the:

- number of motor carriers/vehicles registered and/or permitted by each pilot state;
- response by motor carriers to the pilot;
- problems encountered administering the state program;
- issues related to state administration of the federal program;
- effectiveness of the repository to facilitate the Uniform Program; and
- state perspective on the effectiveness of the program.

Within 690 days of the effective date of the contract, NGA and NCSL, working with the pilot states, the board, and industry representatives, will draft a final report on the one-year pilot program. At a minimum the final report will include the following:

- an assessment of the feasibility of implementing the Alliance's Uniform Program in states that elect to administer the program;
- information related to the cost of implementing the program;
- recommendations to the Secretary of Transportation related to changes in the Uniform Program to be included in the proposed federal regulation;

- recommendations related to the provisions to be included in a multi-state compact among states that implement the Alliance's Uniform Program including the role and functions of a national repository;
- an estimate of the cost of operating a national repository to facilitate a reciprocal state program; and
- the feasibility of state administration of the federal registration and permitting program.

SECTION 8 OTHER ALLIANCE RECOMMENDATIONS

Throughout the Alliance's deliberations, the group has identified related issues on which the group wished to express an opinion. One example is support of a Class 9 placard for miscellaneous hazardous waste products. This section will outline all such recommendations made by the Alliance.

Relationship of Uniform Program to RSPA Registration Program. Beginning in July 1992, the Research and Special Programs Administration of USDOT began implementing the federal hazardous materials transportation registration program mandate under Section 8 of HMTUSA. Under the RSPA program, each covered carrier and shipper must file an annual registration statement and pay a registration fee of \$250.00 plus a \$50.00 processing fee. Revenues generated from the registration fee are returned to the states in the form of matching grants for state and local emergency response planning and training. Seventy-five percent of the state grant must be passed through to local emergency planning and response agencies.

While Congress authorized parallel registration programs (federal and state) in HMTUSA, the existence of two separate programs with different forms and different filing deadlines runs counter to the Alliance's support for one-stop shopping for all motor carrier registrations and permits. As part of the Alliance pilot program to test the feasibility of the proposed Uniform Program, the state of Ohio **has** volunteered to demonstrate the potential for state administration of the federal program. Under this demonstration, Ohio will be able to issue the federal registration number when an Ohio-based carrier applies for its registration and permit under the Uniform Program.

The Alliance views this as a good first step to an eventual consolidation of the two registration programs. Options for full implementation include:

- USDOT contracting with states to administer the federal registration program, or
- elimination of the federal program, enabling states to increase their own registration fees to cover the cost of a state and local emergency response planning and training **program**.

The interim **governing** board that is overseeing the four-state pilot program will include a recommendation to the Secretary on consolidation of the state and federal registration programs based on the Ohio experience.

Relationship of Uniform Program to Federal Motor Carrier Safety Permit Program. On June 17, 1993, the Federal Highway Administration issued a proposed rule to implement Section 8 of HMTUSA. The proposed rule establishes a motor carrier safety permit program for motor carriers transporting Class A and/or B explosives, liquefied natural gas, toxic by inhalation materials, and highway route controlled quantity radioactive materials. The rule proposes a modification of the existing safety rating system to comply with this requirement. No fee is envisioned by FHWA in order to administer the program.

At this time, the Alliance sees no particular conflict between the recommended state Uniform Program and the FHWA proposed permit approach. The **Federal Register** notice reads that, "This new permit requirement would, under section 13 of the HMTUSA (49 U.S.C. app. 1811), preempt any State permit requirement dealing with transportation of the same hazardous materials if

compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the accomplishment of the HMTA and the regulations." The Alliance's program presents neither a dual compliance problem nor an obstacle to the federal program.

The Alliance believes that opportunities may exist for some form of joint administration of the state and federal program. For example, since the uniform state program is more stringent than the federal program and includes the USDOT safety rating as an evaluation criteria, what is the justification for a federal permit if the carrier has already satisfied the permit requirements under the uniform state program? One option would be for the Secretary to waive the federal requirement for motor carriers that have obtained a permit under the Uniform Program.

Recommendations on the Federal Routing Program. On October 30, 1992, the Alliance submitted comments to the Federal Highway Administration on proposed regulations published in the *Federal Register* on August 31, 1992. At that time, the Alliance expressed concern that the definition set forth for "routing designations" was too broad and could impinge on the states' authority to permit hazardous materials transporters under the Section 22 authority. Specifically, the Alliance believes that state registration and permitting requirements are not subject to the preemption provisions contained in the routing standards. The final rule should acknowledge that state and local laws and regulations applying to highway transportation of hazardous materials, such as a permit requirement not related to a specific route, are not routing designations and constitute a separate regulatory area.

The Alliance also identified two means of making the Uniform Program and the routing requirement complementary. First, the Alliance has included, as part of its uniform permit application, a certification that the "...applicant company is aware of, and will observe, all state designated routing requirements as required by 49 CFR and so instructs its drivers." Second, the Alliance has discussed with the Federal Highway Administration the possibility of using the national repository, identified in the Alliance's proposed Uniform Program, as a clearinghouse for all routes designated under the proposed federal program.

Federal Regulations for Preemption and Waiver Process. Section 22 of the Hazardous Materials Transportation Uniform Safety Act also requires the Secretary of Transportation to establish, by regulation, a process for determining preemption of state hazardous materials transportation programs that do not conform with the Uniform Program and a process for waiving preemption of state activities. To date, USDOT has not begun the rulemaking process.

The Alliance urges the Secretary to begin the rulemaking process at the earliest possible date to ensure that challenges to state activities and states' request for preemption waivers can be handled in an expeditious manner. The Alliance also urges the Secretary, to the extent allowed under federal rulemaking procedures, to involve members of the Alliance and its industry advisors in the development of these regulations.

APPENDIX A
ALLIANCE MEMBERS AND STAFF

The following is a listing of the membership of the Alliance for Uniform **HazMat** Transportation Procedures as of the final meeting of the Alliance on May **22-23, 1993**. During the course of the project, the membership changed based on career changes by individual members. Following the list of current members is a listing of other individuals, who at one time served as members of the Alliance.

Current Membership

Rose **McKinney-James**, Chair
Commissioner
Nevada Public Service Commission

Nancy J. Brown, Vice Chair
State Representative
Kansas

Rita Anderson
Ponca City, Oklahoma

William Ayre
Supervisor
Genesee Charter Township
Michigan

Donald M. Bayer
Senior Research Analyst
Nevada Legislative Counsel Bureau

James T. **Beall** Jr.
Councilmember
San Jose, California

Elmer A. **Bietz** (served as Alliance vice
chair from January 1992 to January
1993)
Former State Senator
South Dakota

Ron Cease
State Senator
Oregon

William Diamond
Director, **Quadcom/911**
Carpentersville, Illinois

Dave Galt
Administrator
Motor Carriers Services Division
Montana Department of Transportation

Grace Goodman
Assistant Corporation Counsel
City of New **York, New York**

Stephen **L. Hermann**
Hazardous Materials Coordinator
Special Services Division
Arizona Department of Public Safety

Stephen J. **Hiniker**
Department of Administration
City of Milwaukee, Wisconsin

Donald H. Jorgensen
Former Deputy Secretary
Wisconsin Department of Transportation

Richard Katz
Assemblyman
California

Michael E. **Klebe**
Chief
Division of **Low** Level Radioactive
Waste Management
Illinois Department of Nuclear Safety

Steven D. Lesser
Deputy Director
Transportation Department
Public Utilities Commission of Ohio

Norman J. Levy
State Senator
New York

James L. Little
Director
County Road Association of Michigan

Clark Martin
Director of Motor Carrier Services
American Association of Motor Vehicle
Administrators

L. Jack Miller
Supervisor
Manor Township, Pennsylvania

Kenneth Nemeth
Executive Director
Southern States Energy Board

Edward A. Pritt
Enforcement Supervisor
West Virginia Public Service
Commission

Susan Rieff
Director of Environmental Policy
Office of the Governor
Texas

Roger Roy
State Representative
Delaware

William F. Soo Hoo
Director
Department of Toxic Substance Control
California Environmental Protection
Agency

Reford C. Theobald
Mayor
Grand Junction, Colorado

Diane K. Weeks
Assistant Commissioner
New Jersey Department of
Environmental Protection and Energy

Non-voting Industry Representative

Cynthia Hilton
Manager
Hazardous Waste Program
National Solid Wastes Management
Association

**Non-voting Environmental/Consumer
Representative**

J. Ross Vincent
Sierra Club
Pueblo, Colorado

Former Members*

Ralph Craft
Transportation Analyst
New Jersey Governor's Office
Washington, D.C.

Bernard J. Felder
Clerk
Frenchtown Charter Township
Michigan

John A. Rothwell
Director
Montana Department of Transportation

Richard Rice (served as Alliance chair
from January 1992 to January 1993)
Director
Missouri Department of Public Safety

Nance J. Stamboni
Associate Administrator
Maryland Division of Motor Vehicles

* Title refers to position held during the member's tenure on the Alliance.

Douglas P. Todd
State Senator
Arizona

George Burmeister
Policy Specialist
National Conference of State
Legislatures

Alliance Staff

The following individuals served as the
primary staff to the Alliance:

Jay **Kayne**
NGA Project Manager
National Governors' Association

Patty Catherwood-Reyes
Senior Analyst
National Governors' Association

Dwight Conner
NCSL Project Manager
National Conference of State
Legislatures

Paul Doyle
Senior Policy Specialist
National Conference of State
Legislatures

James Reed
Principal Investigator
National Conference of State
Legislatures

Jan Dunlavey
Senior Staff Associate
Center Conference Management
National Governors' Association

Jacqueline Cummins
Research Analyst
National Conference of State
Legislatures

Luisa Farrell
Staff **Assistant**
Center Conference Management
National Governors' Association

Eric Dobson
Policy Analyst
National Governors' Association

Mary Houghton, Editor
Translines

Raquel Stanton
Administrative Assistant
National Governors' Association

Legal Council Provided by

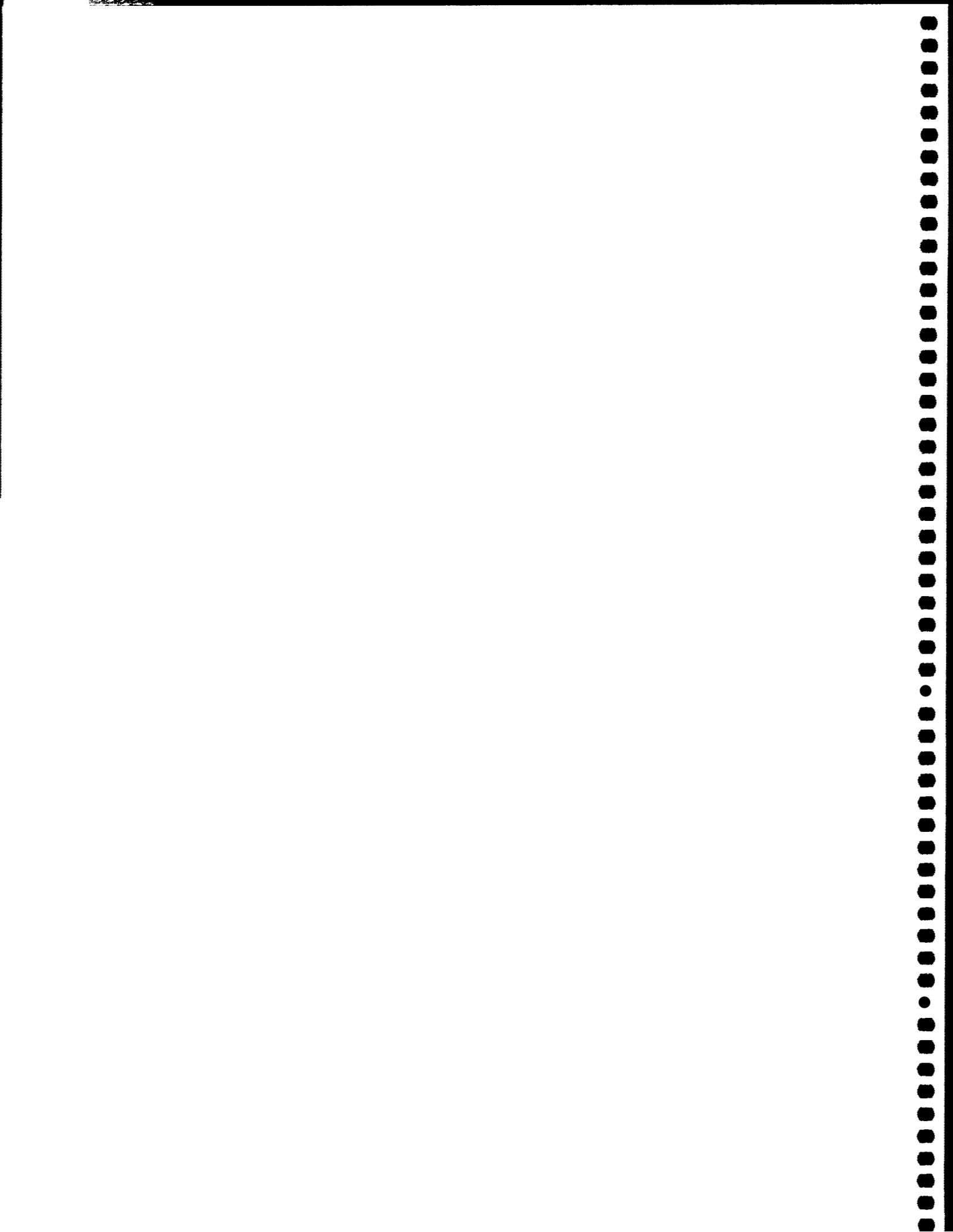
Jenner & Block
Washington, D.C.

Donald B. Verrilli Jr.
Theresa Chmara
Bruce J. Ennis

The following individuals provided additional
staff support to the Alliance during the
course of the project:

Richard Hayes
Director
Information Management Program
National Governors' Association

Russ Brodie
Senior Analyst
National Governors' Association



APPENDIX B PRINCIPLES OF OPERATION

Membership

Full membership on the Working Group is limited to 30 state and local government officials that have been approved by the U.S. Department of Transportation. However, two non-voting seats shall be assigned to the working group. One seat will be reserved for an industry advisory representative and the other seat will be reserved for an environmental and safety advocate. These non-voting members will have the right to speak at all meetings and review documents.

Voting

A majority of the voting members of the Working Group shall constitute a quorum.

A simple majority of the voting members of the Working Group present is needed to carry a vote. However, the final Working Group's recommendations shall be carried by a vote of two-thirds of the full Working Group.

Working Group members may send a representative to serve in their absence, but that person may not vote.

A proxy vote can **only** be given to another voting member of the Working Group.

Subgroups

Subgroups shall consist of 6-12 members.

The Chairperson of the Working Group, in consultation with the Vice-chairperson, shall appoint the subgroups and subgroup chairpersons.

Subgroup chairpersons shall solicit membership to accomplish the goals of the subgroup.

Subgroups shall report their findings to the Working Group.

Meeting Requirements

The Work Plan shall guide the activities of the Working Group.

A record of the Working Group and subgroup proceedings shall be maintained.

All meetings of the Working Group and subgroups shall be open.

APPENDIX C
PARTICIPANTS

The Alliance wishes to acknowledge the participation of the many state government officials, federal government officials, industry representatives, and members of the general public who have **contributed** to this two-year effort. The following is a comprehensive list of individuals who have attended meetings of the Alliance and its subgroups and task forces, responded to surveys and questions about their hazardous material transportation activities, and commented on the many drafts of reports, briefing papers, and position papers produced by the staff. The Alliance gratefully appreciates their interest, knowledge and experience in the safe transport of hazardous materials through the uniform state program mandated under Section 22. [Note: An individual's name in the following listing does not imply that the individual supports any or all of the recommendations contained in this report]

Meeting Attendees

State Government Officials

Lloyd **Batham**

California Department of Toxic
Substances Control

Clyde Buchanan

South Carolina AGENCY

Gerald Burke

New Jersey Attorney General's Office

Tom **Cantwell**

Wisconsin Department of **Transportation**

Lyle **Crocker**

Missouri Department of Natural
Resources

George **Edgerton**

California Highway Patrol

Henry Ellingson

Wisconsin Department of Transportation

Robert J. Haggarty

New York Department of Environmental
Conservation

Spike Helmick

California Highway Patrol

Bill Krinson

New Jersey Department of
Environmental Protection and
Energy

Stacey Ladner

Maine Department of Environmental
Protection

Edward J. Londres

New Jersey Department of
Environmental Protection and
Energy

Ken Marshner

New Hampshire AGENCY

Lawrence Matz

California Department of Toxic
Substances Control

Jami McClellan

West Virginia Public Service
Commission

Ed Moore

New Jersey State Police

Elizabeth Parker
Minnesota Department of Transportation

David Donaldson
Research and Special Programs
Administration

Steve Resnick
New Jersey Attorney General's Office

U.S. Department of Transportation

Cynthia M. Signore
Rhode Island Department of
Environmental Management

Robert W. Draper
Federal Highway Administration
U.S. Department of Transportation

Stephen P. Trudell
New York Legislative Commission on
Critical Transportation Choices

Jerry Emerson
Federal Highway Administration
U.S. Department of Transportation

Harley Williams
New Jersey Attorney General's Office

Jeffrey S. Lofthus
Federal Highway Administration
U.S. Department of Transportation

Federal Government Officials

Bonnie Bass
Federal Highway Administration
U.S. Department of Transportation

Douglas McKelvey
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U.S. Department of Transportation

Ed Bonekemper
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Administration
U.S. Department of Transportation

Joseph Navelanko
Research and Special Programs
Administration
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Bill Byrd
Federal Highway Administration
U.S. Department of Transportation

Beth Romo
Research and Special Programs
Administration
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Ralph Craft
Federal Highway Administration
U.S. Department of Transportation

George Whitney
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U.S. Department of Transportation

Pamela Deadrich
Federal Highway Administration
U.S. Department of Transportation

Industry Representatives

Mike Augustyniak
Sea Land Services

Owen C. Baker
Compressed Gas Association

Tom Baker
Advanced Environmental Technology
Corporation

Jan **Balkin**
American Trucking Association, Inc.

Carolyn Barr
Consolidated Freighhvays

Paul Bomgardner
American Trucking Association, Inc.

Robert Boott
DISCUS

Arm Burr-is
Heritage Transport

Mike Camey
Autumn Industries

Robert Chitren
Nerola

Carl **Clark**
Eldridge, Inc.

John Collins
American Trucking Associations, Inc.

Tom Devine
Custom Environmental Transport

Charles **Dickhut**
Price Trucking

Thomas **Dowling**
Institute of Makers of Explosives

Bob Falstad
IME

Bonnie B. **Fedchock**
National Private Truck Council

Clifford J. Harvison
National Tank Truck Carriers, Inc.

Mary B. **Heaton**
Chemical Manufacturers Association

Mark Johnson
Roadway Express

Mike Kelly
Yellow Freight

Richard King
Regulatory Management Consultants

Dennis Lese
AMOCO Oil Company

Margaret H. Matheson
American Petroleum Institute

Elizabeth Maurer
Conoco

Bud **Mayes**
Viking Freght System

William J. **McCurdy, Jr.**
E.I. **duPont deNemours & Company**

Joe **McDade**
Yellow Freight

Pat Naberezny
Chemical Waste Manegement

Duane O'Donnell
Jack Gray Transport

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Schneider National

Anger Ramirez
Roadway Express

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JB Hunt Special Commodities, Inc.

Frank Szymendera
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Carrie Taranta
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Ron Wadsworth
RMC

S. C. Watkins
Allied-Signal, Inc.

Tom Wilson
Yellow Freight

John V. Zimmer
Mobil Oil Corporation

Other Participants

Rebecca Brady
National Conference of State Legislatures

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Northeast Waste Management Officials
Association

Carolyn Drake
Southern States Energy Board

Bill Druhan
American Association of State Highway and
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Robert Fogd
National Association of Counties

Jack Fryer
Surface Transportation Subcommittee
U.S. House of Representatives

Beth McClellan
Southern States Energy Board

Becky Rawlings
St. Louis Sierra Club

Individuals from Whom the Alliance Received Comments on Draft Documents

State Officials

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Northeast Waste Management Officials'
Association

Gerald Burke
New Jersey Department of Law and
Public Safety

Lyle **Crocker**
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Resources

Frankie Sue Del Papa
Attorney General
State of Nevada

Marlen Dooley
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Environmental Protection and
Energy

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California Highway Patrol

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Jeffrey R. Howard
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Paul Weeden
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Arkansas

Vicky Renfrow
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Ecology

Maurice Smith
Highway and Transportation Department

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California Highway Patrol

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Paul Franson
Department of Environmental Protection

District of Columbia

Sgt. Bernard Brooks
Metropolitan Police Department

Delaware

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Mike Stevens
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Lucia Ramey
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Public Service Commission

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Kermit Kiebert
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Illinois Environmental Protection Agency

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Stacy Ladner
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Maryland

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Maryland Department of Environmental

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Public Health Department

Tomas Leep
Department of Natural Resources

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Sister Marlene Marshall
Board of Health

Elizabeth Parker
Carrier Safety and Compliance
Minnesota Department of Transportation

Mississippi

Eddie S. Fuente
Division of Radiological Health
Health Department

Missouri

Lyle Crocker
Transportation PCB Unit
Department of Natural Resources

Montana

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Montana Department of Health and
Environmental Sciences

Nevada

Captain William Goddard
Department of Motor Vehicles and
Public Safety
Nevada Highway Patrol

Terry Page
Public Service Commission

New Hampshire

Cherly Fortier
Department of Environmental Services

Charleen Leduc
Road Toll Administration Enforcement
Division
Department of Environmental Services

New Jersey

Marlen Dooley
Department of Environmental Protection
and Energy

Theodore Matthews
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Department of Transportation

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Department of Environmental
Conservation

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A Coulter
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Allan Tinsley
Solid and Hazardous Waste
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Health and Environmental Control
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Oregon Department of Energy

Bobby Morrison
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Department of Environmental
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David Steward-Smith
Nuclear Safety and Energy Facility
Department of Energy

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Beckie Barr
Turnpike Authority

Marilyn Querejazu
Texas Water Commission

Gayle Leader
Bureau of Waste Management
Department of Environmental **Resources**

Tom Wedemeier
Railroad Commission

James Weakland
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Center for Highway Safety
Department of Transportation

Utah

James Lansbarkis
Department of Environmental Quality

Rhode Island

William Maloney
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Public Utilities Commission

Vermont

Ronald Macie
Department of Motor Vehicles

Beverly Migliore
Department of Environmental
Management

Marian Ovaitti
Commercial Vehicles Department
Department of Motor Vehicles

Virginia

Don Field
Motor Carrier Division
State Corporation Commission

Jeff Howard
Board of Health

Wisconsin

Henry Ellingson
Department of Transportation

Debbie Reddman
Department of Natural Resources

Wyoming

Carl Anderson
Solid Waste Management
Department of Environmental Quality

APPENDIX D

Alliance Staff Briefing Papers

To support the work of the Alliance and its subgroups the staff produced a series of briefing papers. The following is a list of the support materials prepared for Alliance Meetings.

- Compilation and Overview of State Hazardous Materials Statutes
- Briefing Paper on Radioactive Materials Transportation
- Overview of Hazardous Waste State Requirements for Generators, Transporters and Treatment, Storage, and Disposal Facilities
- Overview of State Hazardous Materials Transportation Programs
- Summary of **USDOT** Inconsistency Rulings
- Summary of Legislative Purposes of Hazardous Materials Legislation
- Overview of Registration, Permitting, Shipper, and Carrier Definitions as Defined by State **Statutes**
- Overview of **USDOT** Definitions Relevant to the Project Based on Federal Regulations
- Summary of Shipper Permitting Programs
- Analysis of State Radioactive Materials Permit Programs
- Summary of **RSPA's** Responses to the Federal Registration Proposed Rule
- Operations Case Studies on Georgia and New York
- Materials To Be Reviewed During Carrier Audits
- Summary of Federal Rule on Training for Hazardous Materials Transportation, **HM-126F**
- Common Questions Concerning the Proposed Uniform Model Program
- Local Permitting and Registration Programs for Hazardous Materials
- Base State Registration of Hazardous Material Motor Carriers: Calculation of Fees
- Pilot Program to Test Alliance Recommendations
- Selected Revocation or Suspension Criteria for Hazardous Materials Transporter Permits
- White Paper on Outstanding Issues
- Crimes of Dishonesty and Lack of Integrity

- Dispute Resolution Matrix: Issues, Parties, Venues
- Language re: Inclusion of Owner/Operator Mileage
- Language re: Participation in the Permitting Process
- Factors That States Should Consider When National Permit the Suspension or Revocation of a

APPENDIX E
ALLIANCE MEETINGS/DATES/SITES

Project Kick-Off Meeting
Washington, D.C.
October 17, 1991

Registration and Permitting Subgroup
Newark, New Jersey
August 6-7, 1992

First Meeting of the Alliance
Washington, D.C.
January 9-10, 1992

Audit and Enforcement Subgroup
Kansas City, Missouri
August 13-14, 1992

Permitting Subgroup
Phoenix, Arizona
February 20-21, 1992

Third Meeting of the Alliance
St. Louis, Missouri
September 21-22, 1992

Registration Subgroup
Glen Burnie, Maryland
February 27-28, 1992

Hazardous Waste Task Force
Newark, New Jersey
November 23, 1992

Enforcement Subgroup
Las Vegas, Nevada
March 19-20, 1992

Permitting Subgroup
Dallas, Texas
January 21-22, 1993

Operations Subgroup
Denver, Colorado
March 26-27, 1992

Audit and Enforcement Subgroup
San Diego, California
February 4-5, 1993

Registration Subgroup
Annapolis, Maryland
March 5-6, 1992

Fourth Meeting of the Alliance
San Antonio, Texas
March 22-23, 1993

Permitting Subgroup
Washington, D.C.
May 14-15, 1992

Fifth Meeting of the Alliance
St. Louis, Missouri
May U-251993

Enforcement Subgroup
Washington, D.C.
May 15-16, 1992

Second Meeting of the Alliance
Milwaukee, Wisconsin
June 18-19, 1992

Local Issues Task Force
Newark, New Jersey
August 6, 1992